

ATTACHMENT 73

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Trask, III, William E.

April 24, 2014

1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DIVISION OF PENNSYLVANIA

-----X
:
IN RE: PROCESSED EGG :
PRODUCTS ANTITRUST :
LITIGATION : MDL NO. 2002
: 08-md-02002
***** :
THIS DOCUMENT RELATES TO: :
ALL ACTIONS :
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Videotaped deposition
William E. Trask, III

April 24, 2014
1:20 p.m.

Taken at:
Nestlé USA
30003 Bainbridge Road
Solon, Ohio

Donnalee Cotone, RMR, CRR
NCRA Realtime Systems Administrator

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<p style="text-align: right;">2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of Defendants Michael Foods, Inc.</p> <p>4 and Papetti's Hygrade Egg Products, Inc.:</p> <p>5 Stinson Leonard Street LLP, by</p> <p>6 DOUGLAS R. BOETTGE, ESQ.</p> <p>7 150 South Fifth Street, Suite 2300</p> <p>8 Minneapolis, Minnesota 55402</p> <p>9 612-335-1500</p> <p>10 douglas.boettge@stinsonleonard.com</p> <p>11</p> <p>12 On behalf of Nestlé USA and The</p> <p>13 Deponent:</p> <p>14 Jenner & Block, LLP, by</p> <p>15 RICHARD P. CAMPBELL, ESQ.</p> <p>16 353 North Clark Street</p> <p>17 Chicago, Illinois 60654-3456</p> <p>18 312-222-9350</p> <p>19 rcampbell@jenner.com</p> <p>20</p> <p>21 ALSO PRESENT:</p> <p>22 Keith McGregor, The Videographer</p> <p>23 Douglas B. Besman, Esq.</p> <p>24 Senior Counsel, Nestlé USA</p> <p>25 ~ ~ ~ ~ ~</p>	<p style="text-align: right;">4</p> <p>1 INDEX OF EXHIBITS</p> <p>2 NUMBER DESCRIPTION MARKED</p> <p>3 Exhibit 1 Case Management Order No. 10 ... 22</p> <p>4 (Protective Order)</p> <p>5 Exhibit 2 E-Mail Chain, Bates Labeled 35</p> <p>6 NES00000458-00000459</p> <p>7 Exhibit 3 E-Mail from William Trask to ... 65</p> <p>8 Steven Feyman and Ed Lewis,</p> <p>9 dated 11-11-08 w/Attachment,</p> <p>10 Bates Labeled NES00000130</p> <p>11</p> <p>12 Exhibit 4 E-Mail Chain, Bates Labeled 82</p> <p>13 NES00000111-00000114</p> <p>14 Exhibit 5 E-Mail Chain, Bates Labeled 88</p> <p>15 NES000002013-00002015</p> <p>16</p> <p>17 Exhibit 6 Supplier Strategy Sorted by 95</p> <p>18 Vendor, Bates Labeled</p> <p>19 NES00004291</p> <p>20</p> <p>21 Exhibit 7 E-Mail Chain, Bates Labeled 101</p> <p>22 NES00002084-00002085</p> <p>23 Exhibit 8 Quantity Contract: 105</p> <p>24 4615064924, Bates Labeled</p> <p>25 NES00004517-00004528</p> <p>Exhibit 9 Speed Analysis, Bates Labeled .. 111</p> <p>NES00004501</p> <p>Exhibit 10 Quality Contract: 4615077821, . 112</p> <p>Bates Labeled</p> <p>NES00004502-00004507</p> <p>Exhibit 11 E-Mail Chain, Bates Labeled 113</p> <p>NES00000177-00000183</p> <p>Exhibit 12 Two E-Mails, Bates Labeled 121</p> <p>NEX00000076</p>
<p style="text-align: right;">3</p> <p>1 TRANSCRIPT INDEX</p> <p>2</p> <p>3 PAGE</p> <p>4</p> <p>5 APPEARANCES..... 2</p> <p>6</p> <p>7 INDEX OF EXHIBITS..... 4</p> <p>8</p> <p>9 EXAMINATION OF WILLIAM E. TRASK:</p> <p>10 BY MR. BOETTGE..... 7</p> <p>11</p> <p>12 REPORTER'S CERTIFICATE..... 157</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">5</p> <p>1 INDEX OF EXHIBITS (Continued.)</p> <p>2 NUMBER DESCRIPTION MARKED</p> <p>3 Exhibit 13 E-Mail from Ed Lewis to 124</p> <p>4 Various Recipients</p> <p>5 w/Attachment, Bates Labeled</p> <p>6 NES00000482-00000484</p> <p>7</p> <p>8 Exhibit 14 E-Mail Chain, Bates Labeled 129</p> <p>9 NES00000403-00000405</p> <p>10 Exhibit 15 E-Mail Chain, Bates Labeled 133</p> <p>11 MFI01093250109326</p> <p>12</p> <p>13 Exhibit 16 E-Mail Chain w/Attachment, 140</p> <p>14 Bates Labeled</p> <p>15 NES00000394-00000396</p> <p>16</p> <p>17 Exhibit 17 E-Mail Chain, Bates Labeled 145</p> <p>18 NES00000499-00000502</p> <p>19 Exhibit 18 E-Mail Chain w/Attachment, 152</p> <p>20 Bates Labeled</p> <p>21 NES00000072-00000075</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">6</p> <p>1 THE VIDEOGRAPHER: We're on the 2 record. I'm Keith McGregor and I represent 3 Henderson Legal Services. The date is 4 April 24th, 2014, and the time is 1:20. The 5 deposition is taking place at 30003 Bainbridge 6 Road, Cleveland, Ohio. 7 This is Case Number MDL 2002 8 entitled In re: Processed Egg Products 9 Antitrust Litigation, in the United States 10 District Court for the Eastern District of 11 Pennsylvania. The deponent this afternoon is 12 William Trask. Our court reporter is 13 Donnalee Cotone. 14 Will counsel please state their 15 appearances. 16 MR. BOETTGE: Doug Boettge with the 17 law firm of Stinson Leonard Street, representing 18 Michael Foods. 19 MR. CAMPBELL: Richard Campbell of 20 Jenner & Block representing Nestlé and the 21 deponent, Mr. Trask. 22 THE VIDEOGRAPHER: Thank you. 23 Will the court reporter please swear 24 the witness. 25</p>	<p style="text-align: right;">8</p> <p>1 this, you answer my questions audibly because 2 the court reporter can't write down head shakes. 3 Is that fair? 4 A. Right. I got -- yes, I understand. 5 Q. And if at any time this afternoon 6 you don't understand one of my questions, I'd 7 ask that you stop and ask for clarification. 8 Is that fair? 9 A. That's fair. 10 Q. And likewise, if at any time today 11 you do answer one of my questions, I'll 12 understand that you did understand my question. 13 Is that fair as well? 14 A. Yes. 15 Q. Any reason you can't give full and 16 complete testimony this afternoon, Mr. Trask? 17 A. No. 18 Q. What did you do to prepare for your 19 deposition? 20 A. Just spoke with my attorney. 21 Q. And when did you do so? 22 A. Earlier today, and then we had a 23 brief conversation on the phone, I think, last 24 week maybe or early this week. 25 Q. Did you speak to anyone else in</p>
<p style="text-align: right;">7</p> <p>1 WILLIAM E. TRASK, III, of lawful age, 2 called for examination, being by me first duly 3 sworn, as hereinafter certified, deposed and 4 said as follows: 5 EXAMINATION OF WILLIAM E. TRASK, III 6 BY MR. BOETTGE: 7 Q. Good afternoon, Mr. Trask. My name 8 is Doug Boettge. We met a few minutes earlier. 9 I represent the defendant Michael Foods in this 10 matter. 11 Could you state your full name and 12 address, please? 13 A. William Edmond Trask, III, and my 14 current address is 15719 Fernway Avenue, 15 Cleveland, Ohio, 44111. 16 Q. Mr. Trask, have you ever had your 17 deposition taken before? 18 A. No. 19 Q. Let me explain a few of the ground 20 rules. I'll be asking you this afternoon a 21 series of questions and the court reporter will 22 be taking down your answers. 23 Do you understand? 24 A. Mm-hmm. Yes. 25 Q. And it's important that in doing</p>	<p style="text-align: right;">9</p> <p>1 preparation for the deposition today? 2 A. No. 3 Q. Did you review any documents in 4 preparation for your deposition? 5 A. No. 6 Q. Could you briefly give me your 7 educational background? 8 A. BSBA from Bowling Green State 9 University where I specialized in purchasing 10 supply chain and production operations 11 management. 12 Q. And when did you get that degree? 13 A. When? 14 Q. Yes. 15 A. 2004, May. 16 Q. And what did you do after obtaining 17 your degree? 18 A. I continued -- I received a job 19 offer from Pressco Technology, which is right 20 down the street in Solon, and I was a 21 buyer/planner with them. 22 Q. And it's Pressco Technology? What 23 did they do? 24 A. Yeah. They're a high speed vision 25 inspection company for bottles and cans in the</p>

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<p style="text-align: right;">10</p> <p>1 beverage industry.</p> <p>2 Q. And how long did you hold that</p> <p>3 position?</p> <p>4 A. Approximately three years and a</p> <p>5 couple of months.</p> <p>6 Q. So that takes us through</p> <p>7 approximately 2007?</p> <p>8 A. Yes.</p> <p>9 Q. What did you do after that?</p> <p>10 A. I accepted a position here at</p> <p>11 Nestlé.</p> <p>12 Q. And what was the position that you</p> <p>13 accepted?</p> <p>14 A. Sourcing specialist.</p> <p>15 Q. And how long did you hold that</p> <p>16 position at Nestlé?</p> <p>17 A. Approximately two years and eight</p> <p>18 months roughly.</p> <p>19 Q. Can you give me some rough</p> <p>20 parameters of what those dates were? When you</p> <p>21 started and when you left.</p> <p>22 A. July 2007 through May -- or through</p> <p>23 maybe February/March 2010.</p> <p>24 Q. Did your position change while you</p> <p>25 were at Nestlé?</p>	<p style="text-align: right;">12</p> <p>1 A. Group manager of ingredients.</p> <p>2 Q. And then Mr. Warner's position?</p> <p>3 A. He was the head of purchasing. I'm</p> <p>4 not sure what . . .</p> <p>5 Q. And Mr. Warner is still with Nestlé?</p> <p>6 A. Yes. I think so. I mean, I don't</p> <p>7 know.</p> <p>8 Q. So let's talk a little bit about</p> <p>9 your position as sourcing specialist.</p> <p>10 What were your responsibilities?</p> <p>11 A. When I first started, it was to</p> <p>12 support other sourcing managers with projects or</p> <p>13 anything they needed help with.</p> <p>14 Q. You used the term "sourcing</p> <p>15 managers."</p> <p>16 Is that different than the group</p> <p>17 manager of ingredients?</p> <p>18 A. Yes.</p> <p>19 Q. How is that different?</p> <p>20 A. Sourcing managers -- or I think I</p> <p>21 called it purchasing managers, but they</p> <p>22 basically managed a whole category. So for</p> <p>23 instance, there was someone who managed</p> <p>24 vegetables; someone who managed miscellaneous</p> <p>25 ingredients; someone who managed meat protein</p>
<p style="text-align: right;">11</p> <p>1 A. The position itself, no. But I</p> <p>2 gained responsibilities.</p> <p>3 Q. Who did you report to?</p> <p>4 A. When I first started, Ed Lewis, and</p> <p>5 then Steve Feyman.</p> <p>6 Q. And then?</p> <p>7 A. Steve Feyman.</p> <p>8 Q. And for what period of time did you</p> <p>9 report to Mr. Lewis?</p> <p>10 A. I would say within the first 6 to 12</p> <p>11 months. I can't -- I don't recall exactly a</p> <p>12 time frame, but then Steve came in shortly</p> <p>13 within that time frame beginning in 2008 maybe.</p> <p>14 I can't remember.</p> <p>15 Q. Did Mr. Feyman replace Mr. Lewis?</p> <p>16 A. Eventually, yeah.</p> <p>17 Q. Is Mr. Lewis still with Nestlé?</p> <p>18 A. No.</p> <p>19 Q. And do you know when he left?</p> <p>20 A. I don't recall. Sometime in 2008 or</p> <p>21 '9. I can't remember.</p> <p>22 Q. Do you recall who Mr. Lewis reported</p> <p>23 to?</p> <p>24 A. I believe Steve Warner.</p> <p>25 Q. And what was Mr. Lewis' position?</p>	<p style="text-align: right;">13</p> <p>1 and chicken. So they were departmentalized</p> <p>2 based on a certain commodity.</p> <p>3 And then the group manager oversaw</p> <p>4 the activities for those particular purchasing</p> <p>5 managers.</p> <p>6 Q. So was there a source manager then</p> <p>7 assigned to each different commodity?</p> <p>8 A. Yeah, for the most part. I think</p> <p>9 so.</p> <p>10 Q. Who was the source manager for eggs?</p> <p>11 A. When I came in?</p> <p>12 Q. Yes.</p> <p>13 A. Jacki Pecek.</p> <p>14 Q. And did that change at all while you</p> <p>15 were there?</p> <p>16 A. Yes.</p> <p>17 Q. How so?</p> <p>18 A. There was a personal issue she had</p> <p>19 to deal with and she was out for an extended</p> <p>20 period of time. Then I was asked to assume the</p> <p>21 role and then transition into the egg buyer.</p> <p>22 Q. So is it fair to say that when you</p> <p>23 started, you supported Miss Pecek?</p> <p>24 A. I don't recall to what degree, but I</p> <p>25 mean, I was available as a resource.</p>

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<p style="text-align: right;">14</p> <p>1 Q. And then you at some point 2 transitioned into her role as source manager for 3 eggs? 4 A. For eggs, yeah. 5 Q. Do you recall when that occurred? 6 A. The dates are kind of fuzzy, but I 7 think towards the end of 2007, beginning of 8 2008. 9 Q. So when you started, before you took 10 over Miss Pecek's role, did you have 11 responsibilities for ingredients other than 12 eggs? 13 A. I supported other ingredients, but 14 no, not direct ingredients, no. And I -- upon 15 getting eggs, I kind of inherited like 16 breadcrumbs and acidulants, soy products and 17 stuff like that. 18 Q. Okay. So let me back up. 19 When you started as sourcing 20 specialist -- 21 A. Mm-hmm. 22 Q. -- you were involved in a number of 23 different ingredients? 24 A. Yes. I supported the purchasing 25 managers with . . .</p>	<p style="text-align: right;">16</p> <p>1 eggs? 2 A. Roughly. 3 Q. You indicated that your direct 4 supervisor was initially Ed Lewis? 5 A. Yes. 6 Q. And I recall you indicated he was 7 group manager of ingredients? 8 A. Yes. 9 Q. And what ingredients was he the 10 manager of? 11 A. Well, he oversaw, so like there 12 was -- like I said, there were purchasing 13 managers and he was head of the purchasing 14 managers, so he oversaw the purchases for 15 vegetables and there's a miscellaneous 16 ingredient category. Then beef and chicken, 17 like poultry, and then like eggs and all that 18 stuff. 19 Q. Were there people at Nestlé that you 20 would regularly communicate with about egg 21 purchasing? 22 A. I mean, I would give updates to my 23 boss. 24 Q. And that would have been Ed Lewis? 25 A. Yes.</p>
<p style="text-align: right;">15</p> <p>1 Q. And then at some point you 2 transitioned into Miss Pecek's role as a 3 sourcing manager? 4 A. Not sourcing -- I wasn't a sourcing 5 manager. I was still a sourcing specialist, so 6 I had a hybrid role where I managed those two 7 categories, and then I also had a support 8 function role as well. So it was more of a 9 hybrid role. 10 Q. And what categories did you manager? 11 A. It was eggs, bread crumbs, 12 acidulants, beer, liquor, wine and vinegar. I'm 13 trying to think back. Calcium stearates, I 14 think, too. 15 Q. What are acidulants? 16 A. What are acidulants? 17 Q. Yeah. 18 A. I think just -- I forget actually. 19 I want to say lactic acid. I can't remember. 20 Q. What portion of your time was 21 involved with eggs as opposed to the other 22 ingredients you mentioned? 23 A. It was more a portion of the time. 24 It was a greater portion. 25 Q. More than 50 percent of the time on</p>	<p style="text-align: right;">17</p> <p>1 Q. Anyone else you would communicate 2 with with respect to egg purchasing? 3 A. I mean, eventually when Steve Feyman 4 came -- when Steve Feyman came in to transition 5 into Ed's role, then I would communicate that to 6 him as well. 7 Q. Was there anyone at Nestlé you would 8 talk to so that you could have a better 9 understanding of what eggs were necessary in a 10 particular product? 11 A. I don't understand what -- can 12 you -- I don't understand that question. 13 Q. Sure. So why don't you describe 14 more of what your responsibilities were as a 15 sourcing specialist. 16 A. Within eggs or just in general? 17 Q. Within eggs. 18 A. Within eggs? Well, I mean, I would 19 essentially manage the category to where I 20 strategically source the egg ingredients as -- 21 you kind of look at this like a power profile -- 22 what vendors are involved, you know, what's the 23 volume for each particular item, where it's 24 used, specifications, understanding that; then 25 understanding the competitive set to see</p>

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<p style="text-align: right;">18</p> <p>1 where -- what other vendors offer the product 2 that we're procuring. 3 Q. And as an example of understanding 4 the specifications, who would you talk to at 5 Nestlé that would help you understand the 6 specifications? 7 A. Probably -- I mean, I don't recall 8 who I spoke to regarding specifications. 9 Q. Would they be technical people? 10 A. They could have been, yeah. 11 Q. And you indicated part of your 12 responsibilities included understanding kind of 13 the marketplace, which vendors were selling the 14 different eggs? 15 A. Yeah. 16 Q. Who did you work with at Nestlé to 17 help you identify particular vendors? 18 MR. CAMPBELL: Objection as to form. 19 THE WITNESS: What's that? 20 MR. CAMPBELL: Can we stop just one 21 minute? 22 MR. BOETTGE: Sure. 23 THE VIDEOGRAPHER: Off the record. 24 (Whereupon, Douglas B. Besman, Esq. 25 joined the deposition.)</p>	<p style="text-align: right;">20</p> <p>1 understand because it's -- the person who had 2 the position was on a leave of absence, so I 3 didn't really have any resources then. 4 Q. And what resources did you look to 5 outside of Nestlé? 6 A. The Internet. 7 Q. And what particularly on the 8 Internet? 9 A. I just Googled probably egg 10 producers and then that's about it. 11 Q. What about the market itself? How 12 did you understand what was happening in the egg 13 market in your position? 14 A. I reached out to the vendors and 15 also talked to Informa. 16 Q. What's Informa? 17 A. They're an egg -- well, they're an 18 entity that tracks the markets for eggs. 19 Q. And what did you do with the 20 information that you obtained from Informa? 21 A. I used it to -- I used it to better 22 understand how -- where the market is going, 23 what the current conditions are and -- 24 Q. And how was that helpful to you as 25 an egg buyer?</p>
<p style="text-align: right;">19</p> <p>1 (Discussion held off the record.) 2 THE VIDEOGRAPHER: We're back on the 3 record. The time is 1:35. 4 BY MR. BOETTGE: 5 Q. Before we broke, Mr. Trask, your 6 counsel had interposed an objection to my 7 question, and Mr. Campbell can add to this, but 8 when he objects, there's still a question 9 pending, and I ask that you answer to the extent 10 that you understand the question unless 11 Mr. Campbell specifically instructs you not to 12 answer the question. 13 Is that fair? 14 MR. CAMPBELL: He understands that. 15 BY MR. BOETTGE: 16 Q. Would you like me to ask the 17 question again? 18 A. Yes. 19 Q. What I was trying to understand, 20 Mr. Trask, was when you were looking at the 21 competitive marketplace to identify particular 22 vendors, who at Nestlé helped you in that 23 process? 24 A. I don't recall anyone helping me. I 25 reached out to people outside Nestlé to</p>	<p style="text-align: right;">21</p> <p>1 A. So I understand where the market's 2 heading for purchasing activities. 3 Q. Mr. Trask, we've marked as 4 Deposition Exhibit 1 a Protective -- the 5 Protective Order that's in the case, and I've 6 done so as an abundance of caution to the extent 7 I may be showing you documents that have been 8 marked as confidential or highly confidential. 9 This is a document that has a number 10 of provisions that principally provide that you 11 agree to keep the documents and the information 12 learned from those documents confidential. 13 And if you want to take a look at 14 that briefly, feel free to do so. There's an 15 acknowledgment form on the last page that I ask 16 that you execute. 17 MR. CAMPBELL: I've reviewed this, 18 Bill, and this is common in each of these 19 depositions, and witnesses sign this Protective 20 Order agreeing that they will not disclose the 21 substance of any confidential documents to 22 anybody else. 23 So I would advise you to go ahead 24 and just sign it. 25 THE WITNESS: Okay.</p>

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<p style="text-align: right;">22</p> <p>1 BY MR. BOETTGE:</p> <p>2 Q. Okay.</p> <p>3 A. Right now or . . .</p> <p>4 MR. CAMPBELL: Yes, right now.</p> <p>5 Did you mark that as an exhibit,</p> <p>6 Doug?</p> <p>7 MR. BOETTGE: I did. That will be</p> <p>8 Exhibit 1.</p> <p>9 MR. CAMPBELL: All right.</p> <p>10 - - - - -</p> <p>11 (Thereupon, Deposition Exhibit 1,</p> <p>12 Case Management Order No. 10</p> <p>13 (Protective Order), was marked for</p> <p>14 purposes of identification.)</p> <p>15 - - - - -</p> <p>16 BY MR. BOETTGE:</p> <p>17 Q. Thank you, Mr. Trask.</p> <p>18 While you were at Nestlé, did any</p> <p>19 Nestlé subsidiaries or affiliates purchase shell</p> <p>20 eggs?</p> <p>21 A. What do you mean? Like a --</p> <p>22 Q. Eggs that were still --</p> <p>23 A. -- different divisions of the Nestlé</p> <p>24 or --</p> <p>25 Q. Correct.</p>	<p style="text-align: right;">24</p> <p>1 Stouffer's. That's all I can recall off the top</p> <p>2 of my head.</p> <p>3 Q. Do you know if there are any other</p> <p>4 divisions or companies within the Nestlé family</p> <p>5 of companies that purchase egg products?</p> <p>6 A. I think the pet food division is a</p> <p>7 secondary market that I didn't get involved in.</p> <p>8 Q. Any others?</p> <p>9 A. I don't recall.</p> <p>10 Q. So is it fair to say if there were</p> <p>11 eggs being purchased by the Nestlé family of</p> <p>12 companies or divisions, you would have been</p> <p>13 involved in that purchase while you were at</p> <p>14 Nestlé?</p> <p>15 A. Well, I mean, like for the pet</p> <p>16 foods, I wasn't involved in that.</p> <p>17 Q. Apart from the pet food, that's</p> <p>18 true?</p> <p>19 A. As far as I can recall, yeah.</p> <p>20 Q. Let's take Dreyer's for an example.</p> <p>21 Is Dreyer's a separate corporate</p> <p>22 entity of Nestlé?</p> <p>23 A. Well, the way I understood it was</p> <p>24 Häagen-Dazs is West Coast and Dreyer's is East</p> <p>25 Coast.</p>
<p style="text-align: right;">23</p> <p>1 A. I bought for them.</p> <p>2 Q. Now, let me clarify my distinction</p> <p>3 then.</p> <p>4 Do you understand the distinction</p> <p>5 between egg products and shell eggs?</p> <p>6 A. Can you clarify that?</p> <p>7 Q. Sure.</p> <p>8 When I refer to a shell egg, what</p> <p>9 I'll be referring to is an egg that is purchased</p> <p>10 and is still in its shell form.</p> <p>11 A. Oh, no.</p> <p>12 Q. You're not aware of Nestlé having</p> <p>13 purchased any shell eggs?</p> <p>14 A. Not in shell form. Like, so you're</p> <p>15 saying get an egg and they in turn would receive</p> <p>16 an egg that's still in contact in its shell?</p> <p>17 Q. Correct.</p> <p>18 A. Yeah, I don't recall that.</p> <p>19 Q. Let's talk for a moment about Nestlé</p> <p>20 and the family of companies while you were at</p> <p>21 Nestlé.</p> <p>22 Which Nestlé affiliates or entities</p> <p>23 did you purchase eggs on behalf of?</p> <p>24 A. Häagen-Dazs, Dreyer's, Nestlé Toll</p> <p>25 House, confection group, Buitoni, Lean Cuisine,</p>	<p style="text-align: right;">25</p> <p>1 Q. Do you know anything about their</p> <p>2 corporate arrangement or status while you were</p> <p>3 at Nestlé?</p> <p>4 A. I don't recall.</p> <p>5 Q. You mentioned West Coast versus East</p> <p>6 Coast.</p> <p>7 So why don't you tell me what you</p> <p>8 mean by that.</p> <p>9 A. West of the Mississippi, east of the</p> <p>10 Mississippi. So Häagen-Dazs is a brand that was</p> <p>11 primarily used on the West Coast. And then</p> <p>12 Dreyer's was the predominant brand on the East</p> <p>13 Coast.</p> <p>14 Q. Did you understand Dreyer's to be a</p> <p>15 separate entity?</p> <p>16 A. Not necessarily.</p> <p>17 Q. What about Nestlé Toll House? What</p> <p>18 was the -- is that a separate division of Nestlé</p> <p>19 or was that a corporate entity within Nestlé?</p> <p>20 A. I believe it was a division.</p> <p>21 Q. And then you mentioned convection</p> <p>22 [sic]?</p> <p>23 A. Confection.</p> <p>24 Q. Confection?</p> <p>25 A. Like candies.</p>

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<p style="text-align: right;">26</p> <p>1 Q. And could you describe that a little 2 bit more, what you mean by that?</p> <p>3 A. Well, Willy Wonka type stuff.</p> <p>4 Q. Is that a separate division of 5 Nestlé?</p> <p>6 A. I believe so.</p> <p>7 Q. And then Buitoni? What is Buitoni?</p> <p>8 A. Pasta.</p> <p>9 Q. And is that a separate division of 10 Nestlé?</p> <p>11 A. I believe so.</p> <p>12 Q. Same question with Lean Cuisine, 13 separate division of Nestlé or same company?</p> <p>14 A. Separate division.</p> <p>15 Q. And the same with Stouffer's?</p> <p>16 A. Yes.</p> <p>17 Q. Is that a separate division or a 18 separate company?</p> <p>19 A. Division.</p> <p>20 Q. Would you negotiate egg purchases on 21 behalf of each of these divisions we've 22 identified?</p> <p>23 A. Yes.</p> <p>24 Q. And using Dreyer's as an example, 25 would Dreyer's be the company that signed the</p>	<p style="text-align: right;">28</p> <p>1 A. Yeah. I was the buyer for the eggs.</p> <p>2 Q. Okay. But obviously, you weren't 3 personally responsible if nobody paid for those 4 eggs, correct? You bought those on behalf of 5 another entity?</p> <p>6 A. Yeah.</p> <p>7 Q. And what entity did you buy those 8 eggs on behalf of?</p> <p>9 A. So who did I -- so -- so I bought 10 them on behalf of the divisions that were using 11 the eggs.</p> <p>12 Q. And do you recall in the contracts 13 themselves whether the division was identified 14 as the buyer or was it a Nestlé entity 15 identified as the buyer in --</p> <p>16 A. Nestlé Business Services.</p> <p>17 Q. What is Nestlé Business Services?</p> <p>18 A. NBS, it's the group that 19 they're -- they're called NBS. Nestlé Business 20 Services. It's the purchasing group.</p> <p>21 Q. So your understanding is that a 22 Nestlé purchasing group was identified as the 23 buyer in the contracts where Nestlé was 24 purchasing eggs?</p> <p>25 A. Yeah.</p>
<p style="text-align: right;">27</p> <p>1 contract with the supplier?</p> <p>2 A. I don't recall how that was taken 3 back then. I don't recall how that was handled.</p> <p>4 Q. Okay. So you don't recall whether 5 it would have been Dreyer's signing the contract 6 as opposed to a Nestlé entity signing the 7 contract; is that fair?</p> <p>8 A. Yeah, I don't recall.</p> <p>9 Q. And is that the same, that would 10 hold true with the other divisions you 11 mentioned? The Häagen-Dazs, the Toll House, 12 confection? You don't recall who was the 13 purchaser identified in those contracts?</p> <p>14 A. Right. I mean, I purchased in those 15 contracts, but I don't recall where the 16 signature took place.</p> <p>17 Q. I guess I'm a little confused. You 18 said you don't recall where the signature took 19 place.</p> <p>20 A. Well, I think your question was who 21 we signed off on the contracts, right?</p> <p>22 Q. What was the entity that was listed 23 as the buyer in those contracts?</p> <p>24 A. Me.</p> <p>25 Q. You?</p>	<p style="text-align: right;">29</p> <p>1 Q. Is Nestlé Business Services, as you 2 recall, a separate entity?</p> <p>3 A. I believe it's a third-party 4 purchasing group hired by Nestlé, the way I 5 recall.</p> <p>6 Q. What do you mean by a third-party?</p> <p>7 A. That's just kind of what it is. I 8 mean, they -- from what I understand is Nestlé 9 Business Services is a third party that Nestlé, 10 I believe, hires on behalf of them to do all 11 their purchases.</p> <p>12 Q. Does Nestlé Business Services have 13 their own employees?</p> <p>14 A. I'm not sure how that's identified. 15 I'm not sure how that's -- I'm not sure if 16 it's -- they have their own employees, yes, so I 17 don't know how that's distinguished within 18 Nestlé itself anymore.</p> <p>19 Q. So Nestlé Business Services has its 20 own separate group of employees, correct?</p> <p>21 A. I believe so.</p> <p>22 Q. Did you work for Nestlé Business 23 Services?</p> <p>24 A. Mm-hmm. I was in that group.</p> <p>25 Q. Who did you understand your employer</p>

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<p style="text-align: right;">30</p> <p>1 to be when you were at Nestlé?</p> <p>2 A. Nestlé.</p> <p>3 Q. When you say "Nestlé," Nestlé, Inc.,</p> <p>4 Nestlé --</p> <p>5 A. Nestlé USA.</p> <p>6 Q. Nestlé USA.</p> <p>7 And what did you understand to be</p> <p>8 the relationship between Nestlé USA and Nestlé</p> <p>9 Business Services?</p> <p>10 A. That we provide a service for them</p> <p>11 and that's it.</p> <p>12 Q. So you understood that Nestlé</p> <p>13 Business Services provided a service to Nestlé</p> <p>14 USA?</p> <p>15 A. Yes.</p> <p>16 Q. But Nestlé USA was a separate</p> <p>17 company than Nestlé Business Services, correct?</p> <p>18 A. I don't know if that's true. I</p> <p>19 don't know how to distinguish them.</p> <p>20 Q. Where is Häagen-Dazs manufactured?</p> <p>21 A. The West Coast. I don't recall</p> <p>22 where.</p> <p>23 Q. And what types of eggs are used in</p> <p>24 Häagen-Dazs?</p> <p>25 A. Liquid sugar egg yolks.</p>	<p style="text-align: right;">32</p> <p>1 A. Not that I recall.</p> <p>2 Q. What about for the confection group?</p> <p>3 A. I want to say dried egg whites.</p> <p>4 Q. Buitoni, what type of egg products</p> <p>5 were used for Buitoni products?</p> <p>6 A. Buitoni. Liquid whole eggs.</p> <p>7 Q. How about Lean Cuisine?</p> <p>8 A. I want to say that's where the</p> <p>9 liquid -- or where the dry yolks were, but I'm</p> <p>10 not 100 percent sure.</p> <p>11 Q. And where was Lean Cuisine</p> <p>12 manufactured?</p> <p>13 A. Right here. Lean Cuisine and</p> <p>14 Stouffer's.</p> <p>15 THE REPORTER: I'm sorry, I didn't</p> <p>16 hear you.</p> <p>17 THE WITNESS: Lean Cuisine and</p> <p>18 Stouffer's, I think it's a mixture.</p> <p>19 BY MR. BOETTGE:</p> <p>20 Q. In Solon, Ohio?</p> <p>21 A. Solon.</p> <p>22 Q. Solon?</p> <p>23 A. Yes.</p> <p>24 Q. And you might have mentioned, where</p> <p>25 is the Buitoni manufactured?</p>
<p style="text-align: right;">31</p> <p>1 Q. Any other egg products?</p> <p>2 A. For Häagen-Dazs?</p> <p>3 Q. Yeah.</p> <p>4 A. I think there was a -- like a liquid</p> <p>5 egg white, but I'm not 100 percent sure. It was</p> <p>6 a small amount. It was a very small amount.</p> <p>7 Q. What about Dreyer's? What types of</p> <p>8 egg products were used in Dreyer's product?</p> <p>9 A. The same. Liquid sugar egg yolks.</p> <p>10 Q. And some liquid egg whites?</p> <p>11 A. I think so.</p> <p>12 Q. And do you recall where Dreyer's was</p> <p>13 manufactured?</p> <p>14 A. On the East Coast unless -- yeah, on</p> <p>15 the East Coast.</p> <p>16 Q. What about Toll House?</p> <p>17 A. That was East Coast, and I can't</p> <p>18 remember where it was manufactured.</p> <p>19 Q. And what type of egg products are</p> <p>20 used in Nestlé Toll House?</p> <p>21 A. Dried whole eggs.</p> <p>22 Q. Say that again?</p> <p>23 A. Dried whole eggs.</p> <p>24 Q. Dried whole.</p> <p>25 Anything else?</p>	<p style="text-align: right;">33</p> <p>1 A. I don't recall. I believe it was</p> <p>2 the East Coast.</p> <p>3 Q. And Stouffer's also uses dried</p> <p>4 yolks?</p> <p>5 A. I think, but I don't recall.</p> <p>6 Q. Anything else that you recall?</p> <p>7 A. I don't know.</p> <p>8 Q. Do you recall which vendors supplied</p> <p>9 egg for Häagen-Dazs?</p> <p>10 A. Vaguely.</p> <p>11 Q. Which ones?</p> <p>12 A. West Coast was Golden Oval, which</p> <p>13 was eventually bought out by Rembrandt Foods.</p> <p>14 On the East Coast, I forget. I</p> <p>15 mean, at one point it was Michael Foods and I</p> <p>16 forget -- and I forget who else may have</p> <p>17 supplied it.</p> <p>18 Q. What about Rose Acre?</p> <p>19 A. Yeah.</p> <p>20 Q. Do you recall if Rose Acre supplied</p> <p>21 Häagen-Dazs with ice cream -- or with eggs?</p> <p>22 A. I don't recall if they did or not.</p> <p>23 Q. What about Dreyer's?</p> <p>24 A. I don't recall.</p> <p>25 Q. Toll House?</p>

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<p style="text-align: right;">34</p> <p>1 A. Liquid whole -- or sorry. Dried 2 whole eggs. 3 Q. And who supplied the dried whole 4 eggs? 5 A. Michael Foods did at the beginning 6 and then the business was transitioned to Rose 7 Acre. 8 Q. Do you recall when that transition 9 occurred? 10 A. Probably '08/'09. 11 Q. What about the confection -- the 12 dried white egg whites? Who were those 13 purchased from? 14 A. Same scenarios. It was Michael 15 Foods and I believe it went to Rose Acre. 16 Q. Do you recall the circumstances of 17 that transfer from Michael Foods to Rose Acre? 18 A. Why we switched? 19 Q. Yes. 20 A. Because Michael Foods' prices were 21 very high. 22 Q. Were you involved in that decision? 23 A. Yeah. 24 Q. What about the liquid whole eggs for 25 Buitoni?</p>	<p style="text-align: right;">36</p> <p>1 a document that's Bates numbered NES00000458. 2 It's an e-mail chain between yourself and 3 Mr. Lewis and Mr. Feyman. 4 Do you see that? 5 A. Yes. 6 Q. And I'll represent to you that 7 documents that are Bates numbered or have a 8 label in the lower right with an NES -- 9 A. Okay. 10 Q. -- are documents that were produced 11 in the litigation by Nestlé. 12 A. Okay. 13 Q. I'm going to focus your attention on 14 the bottom e-mail. 15 A. Mm-hmm. 16 Q. And the subject line is E-Mail To 17 John Hill. 18 Do you see that? 19 A. Yes. 20 Q. Who is John Hill? 21 A. He was the head procurement 22 individual for Häagen-Dazs. 23 Q. Dreyer's as well? 24 A. I don't recall if it was Dreyer's. 25 He may have been.</p>
<p style="text-align: right;">35</p> <p>1 A. Michael Foods produced -- supplied 2 it at the beginning and then it was transitioned 3 to Ballas. 4 Q. To who? 5 A. Ballas Eggs. 6 Q. When did that transition occur? 7 A. Roughly the same time frame. I 8 don't recall the exact time frame. So the 9 2008/2009 time frame. 10 Q. What about the dried yolks used in 11 Lean Cuisine? 12 A. I believe it was Michael Foods and 13 then switched to Rose Acre. 14 Q. And I may have asked you this, but, 15 again, with respect to the Dreyer's eggs, do you 16 recall who supplied eggs for Dreyer's? 17 A. I can't remember off the top of my 18 head. 19 - - - - - 20 (Thereupon, Deposition Exhibit 2, 21 E-Mail Chain, Bates Labeled 22 NES00000458-00000459, was marked for 23 purposes of identification.) 24 - - - - - 25 Q. What I'm showing you, Mr. Trask, is</p>	<p style="text-align: right;">37</p> <p>1 Q. And what's your relationship of 2 Edy's at Nestlé? 3 A. I think that's a brand of one of 4 the -- either Dreyer's or Häagen-Dazs. 5 Q. And the e-mail begins with you 6 offering your overall sense or your overall 7 strategy for 2009. 8 Do you see that? 9 A. Yes. I'm looking at it right now. 10 Q. Why were you providing your strategy 11 thoughts? 12 A. Because that's our -- one of our job 13 functions is developing a strategy. 14 Q. And how often did you share your 15 strategy thoughts? 16 A. I think it was an ongoing discussion 17 until we made a decision on, you know, where to 18 go forward. I mean, overall it was -- it was an 19 evolving type thing, because as the market 20 changes, you kind of look at what your 21 strategies are, so . . . 22 Q. And if you turn to the next page, 23 there's a reference on top of the -- in the full 24 paragraph there, "According to Informa." 25 Do you see that?</p>

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<p style="text-align: right;">38</p> <p>1 A. Mm-hmm. 2 Q. I think you had mentioned Informa 3 earlier. 4 A. Yeah. 5 Q. Did you have a -- did Nestlé have a 6 subscription to Informa or how did that 7 information from Informa come to you? 8 A. Yes. I made phone calls to the 9 representative. 10 Q. To who? 11 A. To the representative from Informa, 12 so just my contact there. 13 Q. And do you recall that person's 14 name? 15 A. I remember his last name. I think 16 it was Jordan or something. 17 Q. Mark Jordan? 18 A. Yeah, that sounds about right. 19 Q. And how often would you speak with 20 Mr. Jordan? 21 A. Weekly. 22 Q. Were those set calls that were 23 prearranged? 24 A. No, not necessarily. I mean, if I 25 had questions, I would call him, you know.</p>	<p style="text-align: right;">40</p> <p>1 supplier selection and just the price strategy. 2 Q. I want to bring your attention to 3 the second paragraph of your e-mail to Mr. Lewis 4 and Mr. Feyman. You write, "I plan to wrap up 5 the negotiations." 6 Could you describe those 7 negotiations that you were wrapping up? 8 A. I don't specifically remember what 9 they were, but generally, they were just 10 negotiating pricing with the vendors that were 11 soliciting quotes. 12 Q. When you say "vendors that were 13 soliciting quotes" -- 14 A. That were responding to bids that I 15 sent them. 16 Q. Would you be the one who would be 17 sending them bids? 18 A. Mm-hmm. 19 THE REPORTER: Yes? 20 THE WITNESS: Yes. Yes. 21 BY MR. BOETTGE: 22 Q. And how would you decide which 23 vendors to solicit bids from? 24 A. If they're able to supply what, you 25 know, we require, what product we require.</p>
<p style="text-align: right;">39</p> <p>1 Q. And how was Informa compensated for 2 that? 3 A. I don't recall. 4 Q. Did you receive any other 5 information from Informa other than the 6 telephone communications you had with 7 Mr. Jordan? 8 A. I believe he'd send me e-mails. 9 Q. And do you recall what types of 10 questions you would ask Mr. Jordan? 11 A. Generally, from what I can think of, 12 is mostly market-driven questions, 13 supply/demand, like future projections, current 14 situation, stuff like that. 15 (Short interruption.) 16 MR. CAMPBELL: Is anybody on the 17 phone? Hang it up. 18 You're not much of a draw, Doug. 19 MR. BOETTGE: I hope to do better 20 tomorrow. 21 BY MR. BOETTGE: 22 Q. Mr. Trask, what did Nestlé do with 23 your strategy recommendations? 24 A. I think they helped us formulate 25 what we would do going forward as far as</p>	<p style="text-align: right;">41</p> <p>1 Q. You note here that you're planning 2 to wrap up negotiations and have contracts ready 3 to be placed by the beginning or middle of 4 November. 5 Do you see that? 6 A. Yes. 7 Q. And was there a seasonal aspect to 8 your price negotiations? 9 A. I mean, typically they would go 10 either annual or quarterly, but they -- I mean, 11 they'd be defined in a calendar year. 12 Q. What's that? 13 A. They would be defined in a calendar 14 year, from what I recall, because . . . 15 Q. And you note here that "The quotes 16 will cover 6-month and 12-month pricing." 17 Do you see that? 18 A. Yes. 19 Q. What did you mean by that? 20 A. So either the pricing would be good 21 for 6 months or 12 months. 22 Q. What do you mean by "good for 6 23 months or 12 months"? 24 A. Meaning the agreement -- if the 25 price they submitted for a 6-month quote would</p>

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<p style="text-align: right;">42</p> <p>1 be X and a price submitted for a 12-month quote 2 would be Y, so based on the information we 3 received from Informa and any kind of market 4 research they gave us, we kind of made a 5 decision based on what was the best strategy 6 going forward. 7 Q. So if you would purchase eggs on a 8 12-month basis, is it your understanding the 9 price of that egg would then not change during 10 the duration of the 12-month contract? 11 A. Can you say that again? Sorry. I 12 was looking over some . . . 13 Q. Sure. 14 Just to clarify, you noted that you 15 were looking at prices for 6 months and 12 16 months, correct? 17 A. Correct. 18 Q. And is it fair to understand if you 19 would purchase eggs pursuant to a 12-month 20 contract, the price that Nestlé would be paying 21 for those eggs would stay the same throughout 22 the year? 23 A. It depends if it was a formula price 24 or a fixed price. 25 Q. And describe for me what the</p>	<p style="text-align: right;">44</p> <p>1 you recall Nestlé entering into fixed contracts? 2 MR. CAMPBELL: Objection as to form. 3 Lack of foundation. 4 You may answer that, Bill. 5 THE WITNESS: Oh, I don't recall. 6 MR. CAMPBELL: Doug, could we take a 7 short bathroom break? 8 MR. BOETTGE: Sure. We can do that 9 now. 10 MR. CAMPBELL: Is that okay? 11 MR. BOETTGE: Sure. That's fine. 12 THE VIDEOGRAPHER: Off the record. 13 The time is 2:06. 14 (Recess taken.) 15 THE VIDEOGRAPHER: We're back on the 16 record. The time is 2:11. 17 BY MR. BOETTGE: 18 Q. Mr. Trask, are you familiar with the 19 term "Urner Berry"? 20 A. Yes. 21 Q. What is Urner Berry? 22 A. I believe it's just a certification 23 of eggs. A certification of eggs. A standard 24 to meet. 25 Q. I'm wondering if you're confusing --</p>
<p style="text-align: right;">43</p> <p>1 distinction is between the two. 2 A. Well, formula is variable and fixed 3 is not. 4 THE REPORTER: Are you saying formal 5 or formula? 6 THE WITNESS: Formula. 7 BY MR. BOETTGE: 8 Q. So in a fixed contract, the price 9 that Nestlé would pay for the eggs would not 10 change -- 11 A. Correct. 12 Q. -- during the period of the 12 13 months? 14 A. If we agree to that. 15 Q. And did Nestlé agree to 12-month 16 fixed contracts? 17 A. I don't recall that we did. A lot 18 of it -- this was -- we did very little fixed 19 contracting during that -- for this 2009 20 strategy. 21 Q. And why was that? 22 A. Because I believe the market 23 was -- because in 2008 the market was coming 24 down off of historic highs. 25 Q. Prior to the 2008/2009 period, do</p>	<p style="text-align: right;">45</p> <p>1 A. Oh, I was thinking at UEP. Urner 2 Berry is the -- yeah, I confused that. Sorry. 3 Urner Berry is the -- would be like the formula, 4 how the formulas were . . . 5 Q. Do you have a sense of what the 6 Urner Berry market is or was? 7 A. I don't recall. 8 Q. I want to focus again, we were 9 talking before we broke about fixed price 10 contracts. 11 A. Yes. 12 Q. And so if I understand, if Nestlé 13 enters into a 6-month contract, is the price 14 that Nestlé pays affected by what happens to the 15 market of shell egg prices? 16 MR. CAMPBELL: Objection as to form. 17 You can answer, Bill. 18 THE WITNESS: Oh, okay. 19 I don't recall. 20 BY MR. BOETTGE: 21 Q. Let's just walk this through. 22 I think you had told me that in a 23 fixed price contract, the price that Nestlé pays 24 stays the same for the full six months, correct? 25 A. For the term of the contract, yeah.</p>

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<p style="text-align: right;">46</p> <p>1 Q. Or at least there's an agreement at 2 the beginning of the contract what price Nestlé 3 would be paying at the end of the contract; is 4 that fair?</p> <p>5 A. During the time frame. Yeah. So, 6 yeah, if it's fixed for six months between 7 January and June, then that's what the same 8 price -- regardless what the market does, it's 9 the same price.</p> <p>10 Q. And likewise, it's regardless of, 11 for example, the supply of layer hens, correct?</p> <p>12 A. I mean, that's kind of how the fixed 13 price, I think, is established is based on the 14 current market conditions. They also -- for a 15 fixed price they hedged any kind of insurance on 16 top of that because they're taking a risk on 17 volume.</p> <p>18 Q. But, again, during that time period 19 of the contract, the price that Nestlé paid 20 would not be affected by the supply of layer 21 hens during that period, correct?</p> <p>22 A. Correct. Yeah, during that period.</p> <p>23 Q. And you noted that the fixed price, 24 at the time that it's entered into -- well, let 25 me ask you this: Do you know for certain how</p>	<p style="text-align: right;">48</p> <p>1 Q. And what did you do for Beechnut 2 Baby Food?</p> <p>3 A. I was a buyer of packaging.</p> <p>4 Q. And how long did you do that?</p> <p>5 A. About a year and eight months.</p> <p>6 Q. And where did you go to after 7 Beechnut?</p> <p>8 A. Associated Materials, which is where 9 I am at currently.</p> <p>10 Q. Say that again?</p> <p>11 A. Which is where I am at currently.</p> <p>12 Q. Associated Materials?</p> <p>13 A. Associated Materials, yeah.</p> <p>14 Q. And what do you do for Associated 15 Materials?</p> <p>16 A. Sourcing manager.</p> <p>17 Q. And what items do you source?</p> <p>18 A. Chemicals, resins, packaging and 19 MRO.</p> <p>20 Q. MRO standing for?</p> <p>21 A. Maintenance review -- or 22 maintenance, repair and operations.</p> <p>23 Q. Why did you choose to leave Nestlé 24 in March of 2010?</p> <p>25 A. A career opportunity.</p>
<p style="text-align: right;">47</p> <p>1 vendors set their fixed price?</p> <p>2 A. I didn't -- I don't know.</p> <p>3 Q. So it's possible that a vendor could 4 have set its fixed price based on that vendor's 5 cost of production, correct?</p> <p>6 MR. CAMPBELL: Objection as to form. 7 There's no foundation for that and it's 8 speculative.</p> <p>9 You can answer that, Bill.</p> <p>10 THE WITNESS: Say that again.</p> <p>11 BY MR. BOETTGE:</p> <p>12 Q. So it's possible that a vendor could 13 set its fixed price based on its cost of 14 production, correct?</p> <p>15 A. I don't know.</p> <p>16 Q. You wouldn't know either way, 17 correct?</p> <p>18 A. I wouldn't know.</p> <p>19 Q. I want to touch briefly on your 20 background. I didn't follow up.</p> <p>21 You indicated you left Nestlé, I 22 believe, February/March 2010?</p> <p>23 A. Yes.</p> <p>24 Q. Where did you go afterwards?</p> <p>25 A. Beechnut Baby Food.</p>	<p style="text-align: right;">49</p> <p>1 Q. Were the 6 to 12-month time frames 2 something that Nestlé would ask its vendors to 3 bid on?</p> <p>4 A. Not necessarily.</p> <p>5 Q. In other words, were those time 6 frames dictated by Nestlé?</p> <p>7 A. No.</p> <p>8 Q. Did Nestlé tell its vendors what 9 periods of time they would seek for their 10 contracts?</p> <p>11 A. No.</p> <p>12 Q. Your e-mail to Mr. Lewis and 13 Mr. Feyman is broken up by different -- or has 14 four different locations.</p> <p>15 A. Mm-hmm.</p> <p>16 Q. And what is the significance of each 17 of those locations?</p> <p>18 A. I believe -- Bakersfield and Tulare, 19 that was Häagen-Dazs. Laurel was Dreyer's. 20 Fort Wayne, Houston, I forget what that was, and 21 Salt Lake City, I forget what that was as well.</p> <p>22 Q. Given, I think, your testimony that 23 Mr. Hill was involved with Dreyer's?</p> <p>24 A. Um-mmm, Dreyer's and Häagen-Dazs.</p> <p>25 Q. Is it likely then Fort Wayne,</p>

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<p style="text-align: right;">50</p> <p>1 Houston and Salt Lake City were locations 2 related to Dreyer's or Häagen-Dazs? 3 A. I don't think it was. I don't 4 recall. I don't think it was, though. 5 Q. Did Mr. Hill have responsibilities 6 other than Dreyer's and Häagen-Dazs? 7 A. I don't know. 8 Q. And did you make separate purchasing 9 decisions based on each location? 10 A. Excuse me? Say that again. 11 Q. Did you make separate purchase 12 decisions based on location? 13 A. Somewhat, yes. 14 Q. How did location impact your 15 purchase decisions? 16 A. Well, you couldn't 17 necessarily -- for a West Coast plant, you 18 couldn't necessarily transport liquid eggs from 19 the East Coast to the West Coast because of 20 spoil rates, and typically, you would try to 21 find a West Coast vendor to service the West 22 Coast plants and vice versa. 23 Q. I want to focus your attention now 24 on the third bullet underneath the Bakersfield 25 heading.</p>	<p style="text-align: right;">52</p> <p>1 Q. Continuing that third bullet. 2 "Depending on what happens with 3 the...legislation we might need to change our 4 supply focus." 5 A. So probably the current vendor 6 didn't provide those type of eggs. 7 Q. Did you have a sense at the time 8 that if the legislation was passed, the costs of 9 California produced eggs would go up? 10 A. Yes. 11 Q. Why so? 12 A. I don't recall the specifics, but at 13 a high level, it would require more cost and 14 more costly infrastructure, so less laying hens, 15 less cages per square foot, something to that 16 degree. 17 Q. And that would increase costs to the 18 supplier? 19 A. Well, to us as well, yeah. Yeah. 20 Q. So increased costs to supplier -- 21 A. Could -- 22 Q. -- would then result in increased 23 costs to Nestlé? 24 A. It could, yeah. 25 Q. But did you have an understanding</p>
<p style="text-align: right;">51</p> <p>1 A. Okay. 2 Q. It begins, "Depending on what 3 happens with the cage-free legislation ballot in 4 November." 5 What is that a reference to? 6 A. I think there was a cage-free 7 ballot -- I don't know specifics on that, but 8 it's legislation, I think, in California. 9 Q. Why did you believe it was important 10 for you to include in your e-mail? 11 A. Because it would impact us whether 12 we had to procure cage-free eggs or not. 13 Q. Would it impact the purchaser or 14 would it impact the supplier? 15 A. What do you mean "the purchaser"? 16 Q. In other words, did you recall the 17 legislation would have precluded a California 18 location from buying eggs that were not 19 cage-free produced outside of California? 20 A. I think that was a question that 21 was -- I didn't know the answer to that 22 question. 23 Q. What did you mean by, "Might need to 24 change our supply focus"? 25 A. Where?</p>	<p style="text-align: right;">53</p> <p>1 that complying with those -- if that legislation 2 were passed, that would result in increased 3 costs to the producers? 4 A. It could, yeah. 5 Q. What do you mean by "it could"? 6 A. I mean, I don't know for sure. I 7 mean, I would assume it would be, but . . . 8 Q. I think there's a reference right 9 underneath that bullet that begins, "If Dreyer's 10 can lift their UEP requirements, a possible 11 alternative could be Rembrandt Foods in Iowa." 12 Do you see that? 13 A. Mm-hmm. 14 Q. Why did you write that? 15 A. Because they provided liquid sugar 16 egg yokes but they weren't UEP certified, which 17 is what Dreyer's and Häagen-Dazs required driven 18 by outside requirements. 19 Q. What were the outside requirements? 20 A. Well, I think it was just reacting 21 to what Ben & Jerry's was doing with their 22 animal friendly business focus. 23 Q. What was Ben & Jerry's doing? 24 A. I don't recall exactly what they 25 were doing, but they had a green type focus and</p>

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<p style="text-align: right;">54</p> <p>1 cage-free and stuff like that.</p> <p>2 Q. But this isn't cage-free, correct?</p> <p>3 This is UEP?</p> <p>4 A. UEP, but there's certain guidelines</p> <p>5 to be UEP certified and I don't recall what</p> <p>6 those guidelines are, but they're more strict</p> <p>7 than just having hens in a -- in a barn, but</p> <p>8 there are guidelines as to what would qualify as</p> <p>9 a UEP. Certain living conditions and stuff like</p> <p>10 that.</p> <p>11 Q. Any other outside requirements that</p> <p>12 drove the requirement of Dreyer's and</p> <p>13 Häagen-Dazs to use UEP certified egg?</p> <p>14 A. Other than Ben & Jerry's, I'm not</p> <p>15 aware.</p> <p>16 Q. Are you aware of any pressure that</p> <p>17 Nestlé received from customers to have UEP</p> <p>18 certified eggs in their supply?</p> <p>19 A. I don't recall.</p> <p>20 Q. Were you involved in any discussions</p> <p>21 at Nestlé relating to the reasons that Dreyer's</p> <p>22 and Häagen-Dazs required -- let me withdraw the</p> <p>23 question.</p> <p>24 Do you recall when Dreyer's and</p> <p>25 Häagen-Dazs began requiring?</p>	<p style="text-align: right;">56</p> <p>1 A. Yes.</p> <p>2 Q. And again, the reason that they were</p> <p>3 willing to pay the premium was to react to what</p> <p>4 Ben & Jerry's was doing in the market?</p> <p>5 A. Yes, I believe so.</p> <p>6 Q. Were you aware, Mr. Trask, when you</p> <p>7 were at Nestlé, that Nestlé could buy UEP egg</p> <p>8 only from a supplier that was a certified UEP</p> <p>9 producer?</p> <p>10 A. I don't recall.</p> <p>11 Q. Was it your understanding,</p> <p>12 Mr. Trask, that to -- well, I'll withdraw the</p> <p>13 question.</p> <p>14 So we mentioned a number of</p> <p>15 divisions earlier that you purchased eggs on</p> <p>16 behalf of, including Buitoni, confection, et</p> <p>17 cetera.</p> <p>18 Do you recall that discussion?</p> <p>19 A. Yes.</p> <p>20 Q. Was it only Häagen-Dazs and Dreyer's</p> <p>21 that requested or required UEP certified eggs?</p> <p>22 A. I believe so, yes.</p> <p>23 Q. Why was that?</p> <p>24 A. I think it was just because of the</p> <p>25 market pressures from Ben & Jerry's. And</p>
<p style="text-align: right;">55</p> <p>1 A. No, I don't recall.</p> <p>2 Q. Did they require when you were</p> <p>3 there? By the time you started they had already</p> <p>4 had the requirement?</p> <p>5 A. Yeah.</p> <p>6 MR. CAMPBELL: Objection as to form.</p> <p>7 BY MR. BOETTGE:</p> <p>8 Q. Do you recall whether there was a</p> <p>9 premium or upgrade associated with the purchase</p> <p>10 of UEP certified eggs?</p> <p>11 A. Yes.</p> <p>12 Q. What do you recall about that?</p> <p>13 A. Can you be more specific?</p> <p>14 Q. Sure. Do you recall the amount of</p> <p>15 the upcharge or premium?</p> <p>16 A. I don't recall the exact amount, but</p> <p>17 it was in the range of, I would say around</p> <p>18 3¢-ish, 3 to 5¢.</p> <p>19 Q. And when you negotiated UEP</p> <p>20 certified eggs, was that premium or upcharge</p> <p>21 discussed with the vendor?</p> <p>22 A. I believe so, yeah.</p> <p>23 Q. And is it fair to say then, in fact,</p> <p>24 Nestlé did pay the premium or upcharge to</p> <p>25 acquire the UEP certified egg?</p>	<p style="text-align: right;">57</p> <p>1 Ben & Jerry's doesn't participate in other</p> <p>2 things outside of ice cream, so . . . as far as</p> <p>3 I know.</p> <p>4 THE REPORTER: Did you say "does" or</p> <p>5 "doesn't"?</p> <p>6 THE WITNESS: I don't think they do,</p> <p>7 outside of ice cream, as far as I know.</p> <p>8 BY MR. BOETTGE:</p> <p>9 Q. So for those other divisions that we</p> <p>10 just mentioned, the Buitoni, confection, all</p> <p>11 others than Häagen-Dazs and Dreyer's, you</p> <p>12 purchased on behalf of Nestlé non-UEP certified</p> <p>13 egg?</p> <p>14 A. Outside of Dreyer's and Häagen-Dazs,</p> <p>15 I don't believe there's a requirement for UEP</p> <p>16 certified eggs.</p> <p>17 Q. So was it your understanding you</p> <p>18 were purchasing non-UEP certified eggs?</p> <p>19 A. I believe so, yeah.</p> <p>20 Q. Do you recall if Nestlé purchased</p> <p>21 UEP certified eggs from Michael Foods?</p> <p>22 A. I don't recall. I believe at one</p> <p>23 point Michael Foods was supplying the liquid</p> <p>24 sugar egg yolks, but I don't recall that</p> <p>25 distinction.</p>

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<p style="text-align: right;">58</p> <p>1 Q. So if I understand you, you recall 2 at some point Michael Foods selling the sugared 3 yolks, correct? 4 A. I believe. I'm not 100 percent sure 5 on that. I believe they were. 6 Q. And if they were selling UEP sugared 7 yolks to Dreyer's, it's your understanding then 8 that those sugared yolks would have been UEP 9 certified? 10 A. Yes. 11 Q. Do you know any other vendors that 12 have sold Dreyer's UEP certified egg or 13 Häagen-Dazs UEP certified egg? 14 A. I know on the West Coast there was 15 just the Golden Oval, and then eventually 16 Rembrandt brought Golden Oval and operated that 17 plant, so . . . But on the East Coast, I can't 18 remember. 19 Q. Do you have a recollection as to 20 whether Rose Acre sold Nestlé UEP certified 21 eggs? 22 A. I don't recall. 23 Q. And just for clarification, when I'm 24 using "Nestlé" in the deposition, I'm referring 25 to it broadly as all of the divisions we've</p>	<p style="text-align: right;">60</p> <p>1 that's kind of what I would do in that 2 situation. 3 Q. Well, my question was more specific 4 as to quotes that you were offered that perhaps 5 you hadn't agreed upon yet. 6 A. Oh, no, I wouldn't do that. 7 Q. Were there other vendors that you 8 solicited fixed pricing from? 9 A. In what -- like in any division or 10 anything in Nestlé? 11 Q. Any division. 12 A. Yeah. I mean, we went through the 13 bid process. We associated fixed and formula. 14 Q. And what are some advantages of a 15 contract that has fixed pricing? 16 A. Well, an advantage is if the market 17 is projected to go up, you kind of want to hedge 18 a little and fix the price while the market's at 19 a certain -- below a level where you think it 20 might go. So . . . 21 Q. And if you would do so, you would be 22 protected, then, from those increases in the 23 market? 24 A. Hypothetically. 25 Q. What do you mean by</p>
<p style="text-align: right;">59</p> <p>1 talked about earlier; is that fair? 2 A. Okay. Yes. 3 Q. Moving down to the bottom of this 4 first page, there's a notation that for Laurel, 5 that you are "Currently soliciting both fixed 6 and formula pricing for Michael Foods." 7 Do you see that? 8 A. Yeah. 9 Q. Why were you soliciting both fixed 10 and formula pricing? 11 A. Just to see what the quote looked 12 like. 13 Q. Would you explain that? 14 A. Well, depending on what they offered 15 on the formula price or fixed price. Then 16 comparing that against other offers, you try to 17 gauge what the competitiveness is. 18 Q. Do you recall any instances when you 19 would have shared prices that you were quoted 20 with a third party such as Informa to help you 21 make an informed decision? 22 A. Huh-uh. 23 Q. Why not? 24 A. Like I said, I guess I don't recall 25 sharing our pricing with Informa. I don't think</p>	<p style="text-align: right;">61</p> <p>1 "hypothetically"? Wouldn't, in fact, that be 2 the case if you did have a contract that fixed 3 the price? 4 A. Well, it depends what the market 5 did. So hypothetically, if the market did go 6 up, then, yeah, you would -- there would be a 7 cost avoidance, but if it went down then, you 8 know, it wouldn't. 9 Q. And lastly, Mr. Trask, you make a 10 recommendation at the end of your 11 e-mail -- well, let me step back. It says, "We 12 will not be in a position to make a final 13 recommendation until the quotes come in." 14 The next sentence, "When we have 15 them we will get with DGIC" -- 16 A. Mm-hmm. 17 Q. -- "to discuss the appropriate mix 18 and meet DGIC's tolerance for fixed versus 19 variable pricing." 20 Do you see that? 21 A. (Witness nodding in the 22 affirmative.) 23 THE REPORTER: Yes? 24 THE WITNESS: Yes. 25 BY MR. BOETTGE:</p>

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<p style="text-align: right;">62</p> <p>1 Q. Who was DGIC?</p> <p>2 A. I believe it's Dreyer's brand ice</p> <p>3 cream, I think. I think it's a Dreyer's -- I</p> <p>4 think. I can't remember.</p> <p>5 Q. And what did you mean by "their</p> <p>6 tolerance"?</p> <p>7 A. So there is a projection based on --</p> <p>8 so when we get the quotes in, we look at what a</p> <p>9 formula price might look like through the life</p> <p>10 of the contract or a fixed price through the</p> <p>11 life of the contract, and then we kind of see</p> <p>12 would they tolerate -- what would they tolerate</p> <p>13 better, would they -- looking at the options,</p> <p>14 what would they think.</p> <p>15 Q. Was there a different tolerance for</p> <p>16 fixed pricing than there was for formula</p> <p>17 pricing?</p> <p>18 A. You mean tolerance from the</p> <p>19 perspective of any of the other divisions?</p> <p>20 Q. Well, I'm just trying to get a sense</p> <p>21 of what's meant here when you said "to meet</p> <p>22 their tolerance for fixed versus variable</p> <p>23 pricing."</p> <p>24 A. Yeah. So what would they allow.</p> <p>25 Like is this okay for them to -- is the fixed</p>	<p style="text-align: right;">64</p> <p>1 much volume as possible, like for different</p> <p>2 divisions, so we don't have 12 different</p> <p>3 suppliers supplying the whole division. We</p> <p>4 limit it to a few.</p> <p>5 Q. And why was it helpful for Nestlé to</p> <p>6 leverage as much volume from certain vendors?</p> <p>7 A. You just get the most -- hopefully,</p> <p>8 the thought there is getting a competitive</p> <p>9 offer.</p> <p>10 Q. Do you recall any instances in</p> <p>11 which, in fact, Nestlé would receive a greater</p> <p>12 rebate or discount based on the volume of</p> <p>13 product that it bought from a particular vendor?</p> <p>14 MR. CAMPBELL: Objection as to form.</p> <p>15 THE WITNESS: I don't recall any</p> <p>16 particular rebates or discounts. I mean, I</p> <p>17 don't recall any specifics around that.</p> <p>18 BY MR. BOETTGE:</p> <p>19 Q. Do you recall any discussions with</p> <p>20 particular vendors that, in fact, they would</p> <p>21 provide a lower price if, in fact, Nestlé would</p> <p>22 commit to a certain volume of purchases?</p> <p>23 A. I don't think it was formed in that</p> <p>24 way. I think it was understood that if you</p> <p>25 buy -- it wasn't broken out like that in the</p>
<p style="text-align: right;">63</p> <p>1 price -- are they okay doing fixed price net</p> <p>2 portion or formula price net portion. Like</p> <p>3 what's their tolerance level. Like do they want</p> <p>4 to do it, stuff like that.</p> <p>5 Q. Does your use of "tolerance" there</p> <p>6 in that context incorporate the concept of risk?</p> <p>7 A. Yes. Sure.</p> <p>8 Q. How so?</p> <p>9 A. So they look at the -- it's just</p> <p>10 based on what the -- what the projections were</p> <p>11 at the time, what a fixed price formula would</p> <p>12 look like or a variable price formula. So if</p> <p>13 they're willing to take a risk on formula price</p> <p>14 based on market projections and kind of where</p> <p>15 we're looking projected to layout versus a fixed</p> <p>16 price. So it's just their appetite for . . .</p> <p>17 Q. And did the tolerances vary based on</p> <p>18 divisions you were purchasing on behalf of?</p> <p>19 A. I don't recall what the tolerance</p> <p>20 levels were, but, yeah --</p> <p>21 Q. Do you recall that they varied</p> <p>22 between the different divisions?</p> <p>23 A. Not too much, because it was mostly</p> <p>24 a -- when we entered into these agreements, it</p> <p>25 was a -- a lot of it was trying to leverage as</p>	<p style="text-align: right;">65</p> <p>1 bid. It was kind of, here's the bid package for</p> <p>2 all the eggs we buy. Now, if they bid on</p> <p>3 100 percent of the volume and you only gave them</p> <p>4 10 percent, I'm not sure the competitive pricing</p> <p>5 for a lower volume would remain the same,</p> <p>6 but . . .</p> <p>7 Q. Did you help prepare the bid</p> <p>8 package?</p> <p>9 A. Yes.</p> <p>10 Q. What did it look like?</p> <p>11 A. I believe it was an Excel document</p> <p>12 or -- no. We used -- oh, shoot. I forgot -- we</p> <p>13 used an electronic sourcing, Ariba, I think. I</p> <p>14 believe we used Ariba, yeah.</p> <p>15 - - - - -</p> <p>16 (Thereupon, Deposition Exhibit 3,</p> <p>17 E-Mail from William Trask to Steven</p> <p>18 Feyman and Ed Lewis, dated 11-11-08</p> <p>19 w/Attachment, Bates Labeled</p> <p>20 NES00000130, was marked for purposes</p> <p>21 of identification.)</p> <p>22 - - - - -</p> <p>23 Q. What I'm showing you is a document</p> <p>24 that's NES0000130. It's an e-mail from yourself</p> <p>25 to Steve Feyman, Ed Lewis, and the subject is</p>

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<p style="text-align: right;">66</p> <p>1 Ariba Analysis.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And this is the same Ariba that you</p> <p>5 just mentioned that was used to help prepare bid</p> <p>6 packages?</p> <p>7 A. Yes.</p> <p>8 Q. So what is this document that we're</p> <p>9 looking at, the Ariba analysis?</p> <p>10 A. It looks like it was -- it just</p> <p>11 looks like the part number listed above the</p> <p>12 plants, that's the part number for that</p> <p>13 particular egg product, and it went down to --</p> <p>14 Q. Let me stop you right there just to</p> <p>15 be clear.</p> <p>16 So when you mention the part number</p> <p>17 above a plant, that's, as an example here, I see</p> <p>18 above Bloomington, Illinois, 22000301.</p> <p>19 A. Yes.</p> <p>20 Q. Is that a particular egg product?</p> <p>21 A. Yeah. It looks like it's the egg</p> <p>22 whites powder spray.</p> <p>23 Q. Got it.</p> <p>24 A. That's like an internal part number.</p> <p>25 Q. Okay. So this Ariba analysis is</p>	<p style="text-align: right;">68</p> <p>1 bid accordingly.</p> <p>2 Q. How often would the electronic bid</p> <p>3 events occur?</p> <p>4 A. Whenever there was a bid -- I mean,</p> <p>5 when the bidding process -- there's a specific</p> <p>6 time period for bidding process, so, you know,</p> <p>7 before the -- I would say a month or two, two to</p> <p>8 three months before the end of the contract. So</p> <p>9 it gives you ample time to plan.</p> <p>10 Q. And then would Ariba populate the</p> <p>11 information that's on this Excel spreadsheet or</p> <p>12 would this be from you?</p> <p>13 A. Ariba. I believe if I read the</p> <p>14 first page accurately, it imported it from</p> <p>15 Ariba.</p> <p>16 Q. And so let's take a look at that</p> <p>17 first product, the egg albumin powder spray.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And then under Michael Foods, and I</p> <p>21 guess if there's blanks, does that suggest the</p> <p>22 vendor did not bid to sell that product to that</p> <p>23 plant?</p> <p>24 A. Correct.</p> <p>25 Q. And then for Michael Foods there's</p>
<p style="text-align: right;">67</p> <p>1 broken up both by product and by location?</p> <p>2 A. Correct.</p> <p>3 Q. And why was that done?</p> <p>4 A. Well, it was done just so that we</p> <p>5 could separate the plant cost and understand</p> <p>6 total volume for that plant for each product.</p> <p>7 Q. Okay. All right. What else is</p> <p>8 shown in this document?</p> <p>9 A. Let's see here. The vendors that</p> <p>10 are bidding in the business are on the top.</p> <p>11 Q. I understand this is in Excel?</p> <p>12 A. Yes.</p> <p>13 Q. And is this --</p> <p>14 A. It's an import, it looks like, from</p> <p>15 Ariba.</p> <p>16 Q. Ariba is a separate software</p> <p>17 program?</p> <p>18 A. Yes.</p> <p>19 Q. And what would you -- what would be</p> <p>20 the purpose of Ariba?</p> <p>21 A. It's an electronic bid service.</p> <p>22 Q. Would vendors enter information</p> <p>23 directly into Ariba?</p> <p>24 A. Mm-hmm. Yeah, they have their own</p> <p>25 account and they log in and they submit their</p>	<p style="text-align: right;">69</p> <p>1 various prices per pound for, it looks like four</p> <p>2 different periods for fixed prices.</p> <p>3 Do you see that?</p> <p>4 A. Mm-hmm.</p> <p>5 THE REPORTER: Yes?</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. BOETTGE:</p> <p>8 Q. And then does this suggest that</p> <p>9 Michael Foods was proposing a fixed price of</p> <p>10 this product to be sold October through December</p> <p>11 of \$4.80?</p> <p>12 A. Yeah. So we broke it out by quarter</p> <p>13 and it looks like we did a year.</p> <p>14 Q. But the year one, and that's</p> <p>15 Line 2.1.6, correct?</p> <p>16 A. Correct.</p> <p>17 Q. That's a formula, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And the fixed prices are above and</p> <p>20 the fixed prices are listed per quarter,</p> <p>21 correct?</p> <p>22 A. It looks like it, yes.</p> <p>23 Q. So if you had purchased from Michael</p> <p>24 Foods for 2009 -- let me step back. When would</p> <p>25 you sign the contract that's referenced here or</p>

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<p style="text-align: right;">70</p> <p>1 that's being addressed here?</p> <p>2 A. I don't recall.</p> <p>3 Q. So if this -- the e-mail is dated</p> <p>4 November 2008.</p> <p>5 A. Okay.</p> <p>6 Q. And so you've got prices per pound</p> <p>7 going January to March, April through June, July</p> <p>8 through September, October through December.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. So is this contemplating an annual</p> <p>12 contract that would cover January through</p> <p>13 December 2009?</p> <p>14 MR. CAMPBELL: Objection as to form.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. BOETTGE:</p> <p>17 Q. So Michael Foods is proposing if you</p> <p>18 signed this contract prior to January 2009, they</p> <p>19 would tell you what price you would be paying</p> <p>20 for in December of 2009, correct?</p> <p>21 A. Under the fixed portion or --</p> <p>22 Q. Under the fixed portion, correct.</p> <p>23 A. Correct.</p> <p>24 Q. Then under the formula, there's a</p> <p>25 separate price per pound, correct?</p>	<p style="text-align: right;">72</p> <p>1 Q. Do you know any other reason GB</p> <p>2 would be indicated there other than there being</p> <p>3 a grain-based contract?</p> <p>4 A. No. It makes sense.</p> <p>5 Q. Do you have any recollection while</p> <p>6 you were at Nestlé of Michael Foods proposing a</p> <p>7 grain-based contract other than what's</p> <p>8 referenced on this exhibit?</p> <p>9 A. Vaguely.</p> <p>10 Q. What do you recall?</p> <p>11 A. I recall a multiyear commitment.</p> <p>12 Q. And which years were part of that</p> <p>13 multiyear commitment?</p> <p>14 A. I think it was up to a</p> <p>15 three-to-five-year commitment. I can't</p> <p>16 remember -- I can't recall what the time frame</p> <p>17 was.</p> <p>18 Q. When do you recall receiving that</p> <p>19 solicitation or bid?</p> <p>20 A. Probably within this time frame</p> <p>21 here. I don't recall exactly.</p> <p>22 Q. What was your understanding of what</p> <p>23 a grain-based contract was?</p> <p>24 A. Based on fluctuations in grain.</p> <p>25 Q. You indicated -- say that again.</p>
<p style="text-align: right;">71</p> <p>1 A. Correct.</p> <p>2 Q. I want to skip down to the next</p> <p>3 item, which would be the 22002210.</p> <p>4 A. Okay.</p> <p>5 Q. I want to focus specifically at that</p> <p>6 line, 2.2.7, for formula pricing.</p> <p>7 Do you see that?</p> <p>8 A. Okay. Yes.</p> <p>9 Q. And there's a reference to -- under</p> <p>10 Michael Foods, could you read that?</p> <p>11 A. "11-7-8. Michael Foods GB</p> <p>12 proposal."</p> <p>13 Q. And what is your understanding of</p> <p>14 what GB references there?</p> <p>15 A. I don't recall.</p> <p>16 Q. Do you have a sense as to whether GB</p> <p>17 in that context would reference a grain-based</p> <p>18 proposal?</p> <p>19 A. It may have been.</p> <p>20 Q. Do you know of any other use of GB</p> <p>21 that would have been included there?</p> <p>22 A. No.</p> <p>23 Q. Would you refer to grain-based</p> <p>24 contracts as GB from time to time?</p> <p>25 A. I don't recall referring to GB.</p>	<p style="text-align: right;">73</p> <p>1 Based on corn prices and --</p> <p>2 A. Grain. I don't know exactly what it</p> <p>3 was, but . . .</p> <p>4 Q. But your understanding is that there</p> <p>5 were -- that the price of corn would impact the</p> <p>6 price that you'd pay for eggs under the</p> <p>7 contract?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall whether any other</p> <p>10 commodity would have impacted the price that you</p> <p>11 pay under a grain-based contract?</p> <p>12 A. I don't recall.</p> <p>13 Q. So under a grain-based contract, you</p> <p>14 could look at the price for corn and that would</p> <p>15 inform what your price for eggs would be in that</p> <p>16 month?</p> <p>17 MR. CAMPBELL: Objection as to form.</p> <p>18 That's not the testimony.</p> <p>19 THE WITNESS: I don't recall how</p> <p>20 that was, how it would play out.</p> <p>21 BY MR. BOETTGE:</p> <p>22 Q. How did corn prices -- how were corn</p> <p>23 prices used in a grain-based contract?</p> <p>24 A. I don't remember, but the function</p> <p>25 of corn is to feed the chickens and that was a</p>

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<p style="text-align: right;">74</p> <p>1 high portion of the cost.</p> <p>2 Q. Did you understand there was a</p> <p>3 relationship between the price of corn and the</p> <p>4 price at which eggs would be sold under a</p> <p>5 grain-based contract?</p> <p>6 A. I understand it was a cost driver.</p> <p>7 Q. Meaning that the higher cost there</p> <p>8 would be in corn, the higher price Nestlé would</p> <p>9 pay for eggs?</p> <p>10 A. Essentially.</p> <p>11 Q. Do you recall what the other cost</p> <p>12 drivers were in a grain-based contract?</p> <p>13 A. No.</p> <p>14 Q. Do you recall whether the market</p> <p>15 price of shell eggs would be a driver in a</p> <p>16 grain-based contract?</p> <p>17 A. I don't recall.</p> <p>18 Q. You note that you have a vague</p> <p>19 recollection of receiving a grain-based proposal</p> <p>20 from Michael Foods, correct?</p> <p>21 A. Mm-hmm.</p> <p>22 THE REPORTER: Yes?</p> <p>23 THE WITNESS: Yes.</p> <p>24 BY MR. BOETTGE:</p> <p>25 Q. Who else at Nestlé would be familiar</p>	<p style="text-align: right;">76</p> <p>1 been with Steve Feyman or Ed Lewis.</p> <p>2 Q. What do you recall about those</p> <p>3 discussions?</p> <p>4 A. The only thing I recall is just</p> <p>5 presenting what the grain-based contract looked</p> <p>6 like and what the commitment was.</p> <p>7 Q. Do you recall what you said in</p> <p>8 presenting the proposal?</p> <p>9 A. No.</p> <p>10 Q. Do you recall the reaction of others</p> <p>11 at Nestlé -- or let me just step back.</p> <p>12 Do you recall Nestlé's reaction to</p> <p>13 receiving Michael Foods' grain-based proposal?</p> <p>14 A. No. I think the -- just briefly,</p> <p>15 like the appetite of a long commitment was</p> <p>16 something that was not considered to be -- maybe</p> <p>17 we wouldn't have the appetite for that long of a</p> <p>18 commitment.</p> <p>19 Q. Why not?</p> <p>20 A. Locked into the same price group for</p> <p>21 three to five years. When the cost of the eggs</p> <p>22 fluctuates so much, it was just kind of</p> <p>23 something that wasn't, I'm sure, as strongly</p> <p>24 considered at the time.</p> <p>25 Q. So, in fact, Nestlé believed there</p>
<p style="text-align: right;">75</p> <p>1 with Michael Foods' grain-based proposal that</p> <p>2 you're referencing?</p> <p>3 A. Probably Steve Feyman.</p> <p>4 Q. Anyone else?</p> <p>5 A. Maybe Ed Lewis.</p> <p>6 Q. You mentioned a three to five-year</p> <p>7 commitment.</p> <p>8 What did you mean by that?</p> <p>9 A. Well, I think if you entered in a</p> <p>10 grain-based contract, it's not something you go</p> <p>11 from a year-to-year. You enter into a</p> <p>12 three-to-five-year commitment. Meaning you're</p> <p>13 locked into that fluctuation for three to five</p> <p>14 years.</p> <p>15 Q. Did Nestlé ask Michael Foods to send</p> <p>16 it a grain-based contract?</p> <p>17 A. I believe so. We inquired about</p> <p>18 what it would look like.</p> <p>19 Q. Why?</p> <p>20 A. To understand different pricing</p> <p>21 options.</p> <p>22 Q. Do you recall discussing Michael</p> <p>23 Foods' grain-based pricing proposal with anyone</p> <p>24 at Nestlé?</p> <p>25 A. Vaguely. If I did, it would have</p>	<p style="text-align: right;">77</p> <p>1 may be some benefit to paying price that's based</p> <p>2 on the market price of eggs?</p> <p>3 A. I don't recall what their reaction</p> <p>4 was.</p> <p>5 Q. But, again, your comment was with</p> <p>6 respect to being locked into a price for three</p> <p>7 to five years that was untethered -- that was my</p> <p>8 word -- but not tied to the cost of eggs,</p> <p>9 correct?</p> <p>10 A. I don't recall it being like that.</p> <p>11 Q. Well, then what was the discussion</p> <p>12 about the Michael Foods grain-based proposal?</p> <p>13 A. I really don't recollect what the</p> <p>14 exact discussions were, but the only thing I do</p> <p>15 recall is it being based on the fluctuations of</p> <p>16 grain in a three to five-year window.</p> <p>17 Q. So there was a concern of being</p> <p>18 subject to fluctuations of grain for three to</p> <p>19 five years?</p> <p>20 A. I would say that's -- yeah. Or any</p> <p>21 other component within that formula that may</p> <p>22 have existed.</p> <p>23 Q. You mentioned earlier the cost of</p> <p>24 eggs fluctuating.</p> <p>25 What did you mean by that in</p>

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<p style="text-align: right;">78</p> <p>1 connection with a grain-based contract?</p> <p>2 A. Well, since grain is one of -- a</p> <p>3 major cost driver in the price of eggs, it would</p> <p>4 inherently make it a variable in the cost of</p> <p>5 eggs.</p> <p>6 Q. I guess I'm a little bit confused.</p> <p>7 Did you understand that the</p> <p>8 grain-based contract you'd be -- the cost that</p> <p>9 you'd be paying would be based on the cost of</p> <p>10 grain?</p> <p>11 A. I think it was a cost -- it was a</p> <p>12 driver in the formula. I don't recall what the</p> <p>13 formula exactly looked like.</p> <p>14 Q. Did you understand a grain-based</p> <p>15 contract would protect Nestlé against</p> <p>16 fluctuations in the market price of eggs?</p> <p>17 A. I -- I don't know how to -- I don't</p> <p>18 know how much or what happened to that.</p> <p>19 Q. Did you recall that it would provide</p> <p>20 some protection against the market price of</p> <p>21 eggs?</p> <p>22 A. I recall it was suggested it could,</p> <p>23 but I'm not sure how it would have played out.</p> <p>24 THE WITNESS: Thank you.</p> <p>25 BY MR. BOETTGE:</p>	<p style="text-align: right;">80</p> <p>1 A. Okay. Beginning with "However"?</p> <p>2 Q. Correct. Could you read that for</p> <p>3 me?</p> <p>4 A. "However, I am not sure how</p> <p>5 reluctant our suppliers would be to agree to</p> <p>6 something like that since formula-based pricing</p> <p>7 is only a true benefit to both parties if it</p> <p>8 covers a long period of time."</p> <p>9 Q. What did you mean by that?</p> <p>10 A. It means in a formula price, as the</p> <p>11 market fluctuates up and down, there are times</p> <p>12 when it could benefit one party and not the</p> <p>13 other party.</p> <p>14 Q. What was the purpose of it being a</p> <p>15 longer period of time? What's the significance</p> <p>16 of that?</p> <p>17 A. I think being a longer period of</p> <p>18 time is referred to closer to 12 months than one</p> <p>19 month. So a longer period of time, like it</p> <p>20 wouldn't be -- you wouldn't want to do a formula</p> <p>21 price by a month, so that's kind of what that</p> <p>22 means.</p> <p>23 Q. Why wouldn't you want to do a</p> <p>24 formula price for one month?</p> <p>25 A. I guess you could, but it fluctuates</p>
<p style="text-align: right;">79</p> <p>1 Q. So back to Exhibit 3, the Ariba</p> <p>2 analysis.</p> <p>3 A. Yes.</p> <p>4 Q. What would be the result of your</p> <p>5 putting -- or what would be the purpose, again,</p> <p>6 of your putting this spreadsheet together?</p> <p>7 A. So they compile information in one</p> <p>8 spreadsheet?</p> <p>9 Q. Correct. Yeah. What was the reason</p> <p>10 that -- what would you do with that spreadsheet</p> <p>11 then?</p> <p>12 A. To compile it and analyze it side by</p> <p>13 side.</p> <p>14 Q. Would you share it with others in</p> <p>15 your group?</p> <p>16 A. Yeah. So the individuals that I</p> <p>17 reported to. So Steve Feyman.</p> <p>18 Q. Let me go back real quickly to</p> <p>19 Exhibit 2, the e-mail chain from September</p> <p>20 of 2008.</p> <p>21 A. Okay.</p> <p>22 Q. And specifically, the second</p> <p>23 sentence of that first paragraph that begins,</p> <p>24 "Below is a sense of overall strategy." I guess</p> <p>25 it's the third sentence.</p>	<p style="text-align: right;">81</p> <p>1 monthly.</p> <p>2 Q. And you wouldn't want the price to</p> <p>3 fluctuate monthly?</p> <p>4 A. No, it -- I mean, with the formula</p> <p>5 price, that's how it's set up. It fluctuates</p> <p>6 monthly, so . . .</p> <p>7 Q. And then what's the benefit</p> <p>8 of -- why is something like that only a true</p> <p>9 benefit if it covers -- if the formula price</p> <p>10 covers a long period of time?</p> <p>11 A. I think that's from the supplier's</p> <p>12 point of view. And I think I just wasn't</p> <p>13 sure -- in that sentence I wasn't sure what the</p> <p>14 supplier's point of view would be like.</p> <p>15 Q. When you say "something like that,"</p> <p>16 do you know what you're referring to?</p> <p>17 A. What do you mean?</p> <p>18 Q. Well, maybe the second sentence will</p> <p>19 help. It states, "I will explore any</p> <p>20 opportunities we may have in negotiating a</p> <p>21 hybrid contract where we can utilize formula and</p> <p>22 fixed pricing at our discretion"?</p> <p>23 A. Oh, maybe as a thought during the</p> <p>24 strategy if they would be interested in looking</p> <p>25 at fixed and formula options throughout the year</p>

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22 (Pages 82 to 85)

<p style="text-align: right;">82</p> <p>1 for the same product. But -- and then my next 2 statement was, not sure how reluctant, if they 3 would agree to something like that, so . . . 4 Q. And again, why wouldn't the supplier 5 not want to enter into a hybrid contract that's 6 referenced here? 7 A. Maybe they see no benefit on their 8 side? I mean, I don't know. 9 MR. BOETTGE: We're on 4? 10 - - - - - 11 (Thereupon, Deposition Exhibit 4, 12 E-Mail Chain, Bates Labeled 13 NES00000111-00000114, was marked for 14 purposes of identification.) 15 - - - - - 16 Q. Showing you what we've marked as 17 Trask Exhibit 4. It's Bates-stamped 18 NES00000111. 19 I want to focus your attention on 20 the first paragraph. 21 A. Okay. 22 Q. And the note, "We will continue to 23 take advantage of the formula-based pricing from 24 Ballas." 25 What did you mean by "take</p>	<p style="text-align: right;">84</p> <p>1 going up, we're able to fix a cost at a lower 2 level than what we project the formula price to 3 go. Then we can help average our cost down. 4 Q. I'll turn your attention to the 5 third page of the e-mail. 6 A. Okay. 7 Q. An e-mail from you to John Hill and 8 there's another individual, Monte Mace. 9 Who is Monte Mace? 10 A. He worked for John Hill. He was in 11 purchasing as well. 12 Q. And then Steve Warner is identified 13 as well, correct? 14 A. Yes. 15 Q. And what is reflected in the e-mail 16 that's on this third page? 17 A. I'd have to read it. Hold on. 18 (Document review.) 19 It looks as though just a market 20 update. 21 Q. And would this have been a market 22 update you would have prepared based on 23 discussions you had with Informa? 24 A. Yeah. Yes. 25 Q. And you note the subject, Informa</p>
<p style="text-align: right;">83</p> <p>1 advantage?" 2 A. I think it was a more competitive 3 formula price than Michael Foods. 4 Q. Then you note, "We are splitting the 5 Laurel business with Michael Foods at a 50/50 6 split." 7 A. Okay. 8 Q. And what do you mean by that? 9 A. It means 50 percent was Michael 10 Foods and 50 percent was another vendor. 11 Q. And the other vendor, Ballas? 12 A. It may have been. 13 Q. And you note, "I'd like to increase 14 the split to a 60/40 or a 70/30 split." 15 Do you see that? 16 A. Yes. 17 Q. And you state, "I think it's still a 18 good idea to keep Michael Foods in the mix 19 because they provide a fixed price which we can 20 hedge against if the market drives the formula 21 price through the roof." 22 What did you mean by that? 23 A. Well, if we enter into an agreement 24 for a formula price with Ballas, then we're able 25 to average our costs down, if the prices are</p>	<p style="text-align: right;">85</p> <p>1 Weekly Egg Comments. 2 Is this consistent with what you 3 -- I'm sorry. This is the subject of the third 4 e-mail, the third page? 5 A. Yeah. I know. I was just checking 6 dates. 7 Q. Sure. Is this consistent with your 8 testimony earlier that you would speak with 9 Informa approximately on a weekly basis? 10 A. Mm-hmm. Yes. 11 Q. And you prepared -- did you then 12 forward the information that you obtained from 13 talking with Informa to others in your group on 14 an weekly basis? 15 A. Probably just individuals within 16 this e-mail. 17 Q. And you would have sent them 18 information that you learned from Informa on a 19 weekly basis as well? 20 A. Yeah. I know I sent John Hill a 21 separate report, egg report, on, you know, the 22 market of eggs, so . . . 23 Q. Is what you sent John Hill different 24 than what is reflected here or is this an 25 example of that?</p>

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23 (Pages 86 to 89)

<p style="text-align: right;">86</p> <p>1 A. This is an example of it. It was a 2 format. I forgot -- I think it was a one-page 3 PowerPoint thing. I can't remember what it 4 looked like, to be honest. 5 Q. And you would prepare that one-page 6 PowerPoint weekly? 7 A. I don't recall if it was weekly or 8 monthly. 9 Q. Do you recall if that document had a 10 name? 11 A. No, I don't recall. 12 Q. Do you know who else you would have 13 sent it to? 14 A. Steve Feyman would be copied, but 15 I'd just send it to John Hill as an update. 16 Q. And how was that PowerPoint 17 different than what's reflected here as an 18 example of the Informa weekly egg comments? 19 A. It was more focused towards Dreyer's 20 than Häagen-Dazs. 21 Q. And I note in your e-mail you 22 distinguish between shell egg values and egg 23 product values. 24 Do you see that? 25 A. Mm-hmm.</p>	<p style="text-align: right;">88</p> <p>1 - - - - - 2 (Thereupon, Deposition Exhibit 5, 3 E-Mail Chain, Bates Labeled 4 NES00002013-00002015, was marked for 5 purposes of identification.) 6 - - - - - 7 Q. I'm showing you what's been marked 8 as Trask Exhibit 5. It's an e-mail chain, Bates 9 number NES00002013. It goes to 2015. 10 Do you recognize this document? 11 A. Specifically, no. 12 Q. Do you recognize it to be an e-mail 13 chain? 14 A. Yes, it's an e-mail chain. 15 Q. I want to focus your attention on 16 the last page. Let me step back. The second 17 page, the bottom e-mail is an e-mail from 18 yourself to Joe Roberts. 19 A. Okay. 20 Q. Who is Joe Roberts? 21 A. I forget. 22 Q. And the subject is Joseph's Pasta 23 Liquid Whole Egg Overview. 24 A. Okay. 25 Q. What is Joseph's Pasta?</p>
<p style="text-align: right;">87</p> <p>1 Q. And why did you do that? 2 A. I think that was probably just 3 encompassing the update from Informa. 4 Q. And did you have an understanding 5 that the shell egg market was a separate market 6 than the egg product market? 7 A. Yes. 8 Q. The first sentence of that second 9 paragraph, could you state that? 10 A. "The Urner Berry northeast and 11 midwest large shell egg markets really lost 12 steam and fell 12¢, \$1.17 per dozen and \$1.14 13 per dozen respectfully." 14 Q. You know, I made a mistake. I 15 actually wanted to direct your attention to the 16 first sentence of the second paragraph. My 17 mistake. "Egg product values didn't budge"? 18 A. Second sentence? 19 Q. First sentence, second paragraph. 20 A. "Egg product values didn't budge 21 once again this past week and have been 22 surprisingly strong and resilient to changing 23 market conditions of late." 24 Q. What did you mean by that? 25 A. Just that they didn't change.</p>	<p style="text-align: right;">89</p> <p>1 A. I think they're just a pasta 2 division of Nestlé. So they're more the gourmet 3 pastas. 4 Q. Is it separate from Buitoni? 5 A. Yes. 6 Q. Was it another group that you were 7 responsible for purchasing eggs on behalf of? 8 A. I can't remember on -- I think he 9 may have bought himself. I'm not -- I can't 10 remember. 11 Q. But if he did buy himself, did you 12 assist him in that process? 13 A. I gave him prime market intelligence 14 in this is what I thought, you know, what I 15 compiled on our side. 16 Q. And then you have on the last page a 17 list of suppliers? 18 A. Okay. 19 Q. And does this reflect that Michael 20 Foods offered both fixed and formula pricing? 21 A. Yes. That's what it says. So it 22 says 6-month breaking stock formula price, 23 12-month formula price and 12 months fixed 24 price. 25 Q. And in fact, you knew that 12 month</p>

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<p style="text-align: right;">90</p> <p>1 fixed price at this time, correct?</p> <p>2 A. I mean, I don't recall. But it</p> <p>3 looks like their annualized 12 months fixed cost</p> <p>4 is in that fourth bullet.</p> <p>5 Q. As 85.3¢?</p> <p>6 A. Yeah, that's what it looks like.</p> <p>7 Q. And so you had an understanding that</p> <p>8 if you had purchased or contracted with Michael</p> <p>9 Foods for a 12-month fixed contract, you knew 12</p> <p>10 months out you'd be paying 85.3 cents for the</p> <p>11 egg under that contract, correct?</p> <p>12 A. Yes. There's a fixed for a 12-month</p> <p>13 period of time.</p> <p>14 Q. And then there's a notation of</p> <p>15 "Shelf life 84 days."</p> <p>16 Why did you include that?</p> <p>17 A. Because it's important for</p> <p>18 understanding order patterns and inventory</p> <p>19 strategies.</p> <p>20 Q. Is it fair to say that a supplier</p> <p>21 that provides a longer shelf life is more</p> <p>22 valuable to Nestlé than one that cannot provide</p> <p>23 such a long shelf life?</p> <p>24 A. I guess it depends. I don't know.</p> <p>25 Q. How did a shelf life impact your</p>	<p style="text-align: right;">92</p> <p>1 A. That's what it looks like.</p> <p>2 Q. Do you recall if any other egg</p> <p>3 product companies provided a shelf life as long</p> <p>4 as Michael Foods for this product?</p> <p>5 A. What product was this for?</p> <p>6 Q. I believe this was for liquid whole</p> <p>7 egg.</p> <p>8 A. I don't recall.</p> <p>9 Q. You noted with a shorter shelf life</p> <p>10 you would need to turn that inventory over by</p> <p>11 the end of its shelf life?</p> <p>12 A. Yeah.</p> <p>13 Q. Was it a benefit to Nestlé to not</p> <p>14 have to be concerned about having to turn over</p> <p>15 inventory in such a short time period?</p> <p>16 A. It may have been, yes.</p> <p>17 Q. As an egg buyer, Mr. Trask, was</p> <p>18 there a difference in your mind between an egg</p> <p>19 producer who produced primarily market-based</p> <p>20 shell eggs and those producers that produced egg</p> <p>21 products?</p> <p>22 A. What's the distinction between the</p> <p>23 two? I forget.</p> <p>24 Q. Yeah, did you understand a</p> <p>25 difference between those producers who</p>
<p style="text-align: right;">91</p> <p>1 understanding of order patterns and inventory</p> <p>2 strategies?</p> <p>3 A. Well, you'd have to -- 12</p> <p>4 life -- 12-day shelf life, you could only keep</p> <p>5 it on your shelf for probably 10 days by the</p> <p>6 time it gets to your facility or it goes bad.</p> <p>7 Or 84 days, you have -- you could -- there's</p> <p>8 more flexibility in your planning.</p> <p>9 Q. Was that a benefit to Nestlé to have</p> <p>10 more flexibility in its planning?</p> <p>11 A. I don't recall at the time.</p> <p>12 Q. The recommendation at the bottom was</p> <p>13 to use Michael Foods' formula pricing, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And then you note, "The other</p> <p>16 determining factor is the longer shelf life."</p> <p>17 What did you mean by that?</p> <p>18 A. Well, maybe the -- it looks like</p> <p>19 after reading that, it looks like they had a</p> <p>20 competitive formula price, and then another</p> <p>21 factor in choosing them was longer shelf life.</p> <p>22 Q. And that was a factor that was</p> <p>23 helpful to you and supported the</p> <p>24 decision -- your recommendation to choose</p> <p>25 Michael Foods, correct?</p>	<p style="text-align: right;">93</p> <p>1 principally produced shell eggs versus those</p> <p>2 producers who principally produced egg products?</p> <p>3 MR. CAMPBELL: Objection as to form.</p> <p>4 It's vague as to what "difference" means in that</p> <p>5 context.</p> <p>6 You may answer, Bill.</p> <p>7 THE WITNESS: Okay.</p> <p>8 So I guess the egg -- egg -- there</p> <p>9 is people who produce the eggs and then people</p> <p>10 who manufacture the eggs into end products that</p> <p>11 we use.</p> <p>12 BY MR. BOETTGE:</p> <p>13 Q. And you recognize there was a</p> <p>14 difference between those two producers?</p> <p>15 A. To a degree, yes.</p> <p>16 Q. And what did you understand those</p> <p>17 differences to be?</p> <p>18 A. Well, it depends. One processed the</p> <p>19 eggs and the other one provided the eggs.</p> <p>20 Q. And did you understand that</p> <p>21 producers generally would focus either on being</p> <p>22 a shell egg producer versus other producers who</p> <p>23 would focus principally on producing egg</p> <p>24 products?</p> <p>25 MR. CAMPBELL: Objection as to form.</p>

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25 (Pages 94 to 97)

<p style="text-align: right;">94</p> <p>1 Lack of foundation.</p> <p>2 THE WITNESS: Can you ask your</p> <p>3 question again? Can you ask the question again?</p> <p>4 BY MR. BOETTGE:</p> <p>5 Q. Did you recognize a difference</p> <p>6 between those producers who principally produced</p> <p>7 shell eggs as opposed to those producers who</p> <p>8 principally produced egg products?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have some idea that the</p> <p>11 producers who focused on shell eggs had a</p> <p>12 different kind of experience in the market than</p> <p>13 those producers who produced egg products?</p> <p>14 MR. CAMPBELL: Objection. I don't</p> <p>15 understand the word "experience" in that</p> <p>16 context.</p> <p>17 BY MR. BOETTGE:</p> <p>18 Q. I'll withdraw the question.</p> <p>19 A. Yeah. Okay.</p> <p>20 MR. CAMPBELL: Doug, I notice you're</p> <p>21 almost at the end of the tape. I don't know</p> <p>22 what -- what do you want -- can you finish or --</p> <p>23 MR. BOETTGE: I do. I think this is</p> <p>24 a good time for a break.</p> <p>25 MR. CAMPBELL: Okay.</p>	<p style="text-align: right;">96</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And there are different notations,</p> <p>4 Exit Core, T3, Speciality.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Are you familiar with any of those</p> <p>8 terms?</p> <p>9 A. No.</p> <p>10 Q. You testified earlier that part of</p> <p>11 your functions as a sourcing specialist was to</p> <p>12 obtain information about vendors.</p> <p>13 A. Uh-huh.</p> <p>14 Q. Did you ever have occasion to</p> <p>15 essentially rank vendors against each other?</p> <p>16 A. I think there is a Kraljic matrix</p> <p>17 that we used to see where they were as far as --</p> <p>18 what was it? Leverage, strategic, bottleneck or</p> <p>19 --</p> <p>20 THE REPORTER: Leverage?</p> <p>21 THE WITNESS: Leverage, strategic,</p> <p>22 bottleneck, and that's -- I kind of recall those</p> <p>23 are the things. There's like a quadrant type</p> <p>24 thing.</p> <p>25 BY MR. BOETTGE:</p>
<p style="text-align: right;">95</p> <p>1 THE VIDEOGRAPHER: We're off the</p> <p>2 record. This is the end of media segment 1.</p> <p>3 The time is 3:18. We're off the record.</p> <p>4 (Recess taken.)</p> <p>5 THE VIDEOGRAPHER: We're back on the</p> <p>6 record. The time is 3:29.</p> <p>7 MR. BOETTGE: Mark that Exhibit 6.</p> <p>8 - - - - -</p> <p>9 (Thereupon, Deposition Exhibit 6,</p> <p>10 Supplier Strategy Sorted by Vendor,</p> <p>11 Bates Labeled NES00004291, was</p> <p>12 marked for purposes of</p> <p>13 identification.)</p> <p>14 - - - - -</p> <p>15 BY MR. BOETTGE:</p> <p>16 Q. Showing you, Mr. Trask, what has</p> <p>17 been marked as Exhibit 6. It's got a Bates</p> <p>18 number reference at the bottom, NES00004291.</p> <p>19 It's identified as a Supplier Strategy Sorted by</p> <p>20 Vendor.</p> <p>21 Do you recognize this type of</p> <p>22 document?</p> <p>23 A. No.</p> <p>24 Q. There's a column on this document</p> <p>25 referred to as Strategy.</p>	<p style="text-align: right;">97</p> <p>1 Q. I misheard you.</p> <p>2 Did you say a quadrant matrix.</p> <p>3 A. Yeah. It was a quadrant matrix.</p> <p>4 It's a Kraljic matrix. That's what it's called.</p> <p>5 THE REPORTER: Kraljic?</p> <p>6 THE WITNESS: Yeah. It's</p> <p>7 C-R-A-J-L-I-K [sic], I think.</p> <p>8 BY MR. BOETTGE:</p> <p>9 Q. Were you involved in preparing those</p> <p>10 matrices?</p> <p>11 A. Yeah. I mean, we would just kind of</p> <p>12 input some data that would help put</p> <p>13 the -- position the supplier where they were.</p> <p>14 Q. Would you prepare a separate matrix</p> <p>15 for different ingredient categories?</p> <p>16 A. Yeah, I think I would.</p> <p>17 Q. So you would have a separate matrix</p> <p>18 for the egg category?</p> <p>19 A. I believe so, yeah.</p> <p>20 Q. How frequently would you prepare</p> <p>21 such a matrix?</p> <p>22 A. I think in the beginning the</p> <p>23 strategy sessions. So we kind of develop our</p> <p>24 strategy. It just could help you if your</p> <p>25 suppliers -- where it falls in the quadrant,</p>

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<p style="text-align: right;">98</p> <p>1 whether it be strategic, bottleneck, critical or 2 leverage, so . . . 3 THE REPORTER: What was it, the 4 middle word? 5 THE WITNESS: There is strategic, 6 there is leverage, there's critical and then 7 there's bottleneck. 8 BY MR. BOETTGE: 9 Q. And you indicated that you would 10 prepare such a matrix whenever there would be an 11 opportunity to evaluate the vendors or how -- 12 A. Yeah, it was something that they 13 would use. 14 Q. And that they would be -- 15 A. Well, that other purchasing managers 16 would use and what I would use as far as 17 analyzing some of the categories that I managed 18 and then positioning the vendors within that 19 category. 20 Q. And how often, what was the 21 frequency of putting those matrices together? 22 A. I don't know. Once or twice a year. 23 Q. And can you quickly describe each of 24 these parts of the quadrant? What was strategy? 25 A. Strategic is kind of -- there's an X</p>	<p style="text-align: right;">100</p> <p>1 Q. What did you mean by that? 2 A. It just -- strategic partnership. 3 So they may offer -- they may supply a critical 4 item within your supply chain and you kind of 5 develop a partnership with them to maintain 6 supply and, you know, get value out of the 7 process. 8 Q. Can you recall any examples of 9 vendors in which Nestlé had a strategic 10 partnership? 11 A. No. 12 Q. Do you recall any products that fell 13 in that category? 14 A. No. 15 Q. Was the quality of eggs that Nestlé 16 obtained important to Nestlé? 17 A. Yes. 18 Q. Why? 19 A. Because you don't want spilled eggs. 20 Q. Is it fair to say that quality is 21 particularly important for an egg products 22 manufacturer? 23 A. Yeah, I would say it's important for 24 any vendor. 25 Q. In your mind, did any of the vendors</p>
<p style="text-align: right;">99</p> <p>1 and Y matrix. I can't recall like what 2 the -- what it was, but strategic is kind of 3 like a strategic partnership. Generally, it's a 4 specialty type item that you would want to have 5 a partnership with the supplier. 6 Noncritical is something that's a 7 low dollar, a low value. 8 Bottleneck is something where it's 9 low -- high value, but there's not really many 10 alternatives out there. 11 And critical means it's a critical 12 situation where you need to figure out an 13 alternative strategy. 14 Q. And how would a vendor -- what 15 factors would cause a vendor to be more 16 strategic versus less strategic? 17 A. There was a sheet you inputted data. 18 I don't recall what was in that sheet. 19 Q. Was it based on the type of products 20 that those manufacturers would sell? 21 A. I don't recall what it was. 22 Q. When you mentioned strategic, I 23 think you used the term "in a partnership with 24 supplier." 25 A. Mm-hmm.</p>	<p style="text-align: right;">101</p> <p>1 distinguish themselves with the quality of eggs 2 that they supplied? 3 A. I don't recall. 4 Q. Do you recall looking at research 5 and development as a consideration -- 6 A. What do you mean -- 7 Q. -- as to how you would evaluate a 8 vendor? Whether that vendor had research and 9 development capabilities? 10 A. I don't recall. 11 - - - - - 12 (Thereupon, Deposition Exhibit 7, 13 E-Mail Chain, Bates Labeled 14 NES00002084-00002085, was marked for 15 purposes of identification.) 16 - - - - - 17 Q. I'm showing you a document that's 18 been marked Trask Exhibit 7. It's Bates labeled 19 NES00002084 to 2085. 20 Do you see that you're identified as 21 a recipient of the top e-mail? 22 A. Yes. 23 Q. Who is Ned Rokke? 24 A. He's a purchasing counterpart in 25 Minnetonka, Minnesota.</p>

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27 (Pages 102 to 105)

<p style="text-align: right;">102</p> <p>1 Q. You say "counterpart." 2 What do you mean by that? 3 A. Counterpart. You know, he's kind 4 of -- he's in the purchasing department in 5 Nestlé USA. 6 Q. Did Nestlé have egg producers -- let 7 me step back. 8 Do you know if Ned Rokke was 9 involved with egg purchases? 10 A. I don't recall, but if I would read 11 this e-mail, it looks like he may have been 12 involved to some degree. 13 Q. Why don't you look through the whole 14 e-mail. 15 A. (Document review.) Okay. 16 Q. What do you understand was the 17 reason Mr. Rokke was sending this e-mail to you? 18 A. I don't recall. 19 Q. Do you recall the conversation 20 that's referenced in the top e-mail? 21 A. Vaguely. 22 Q. What do you recall about it? 23 A. That he contacted me. That's all I 24 really recall. 25 Q. He notes "Note comments from R&D</p>	<p style="text-align: right;">104</p> <p>1 no. 2 Q. I want to direct your attention to 3 the top of the second page. 4 A. Okay. 5 Q. There's a statement that "Egg 6 products have a high potential for 7 microbiological contamination." 8 What does that mean? 9 A. I do not know. 10 Q. And it notes that this particular 11 vendor "had a proven track record of delivering 12 a product that met our exacting microstandards." 13 Do you recall what "microstandards" 14 are? 15 A. I think it was just part of the 16 specification. 17 Q. And did you have an understanding 18 that Nestlé's specifications were particularly 19 exacting? 20 A. What do you mean "exacting"? 21 Q. Well, you say a word here, a term 22 here in the e-mail, "delivering a product that 23 met our exacting microstandards." 24 Do you know what's meant there by 25 exacting?</p>
<p style="text-align: right;">103</p> <p>1 relative to our conversation." 2 What's the reference to R&D there? 3 A. I have no idea. 4 Q. Do you understand R&D to stand for 5 research and development? 6 A. Yes. 7 Q. And from time to time did you 8 interact with individuals at Nestlé from 9 research and development? 10 A. Yeah, I may have. 11 Q. What would be the reasons that you 12 would have? 13 A. Maybe during a panel where we tested 14 the eggs, maybe get their feedback on how the 15 particular egg, how that was -- how that worked 16 in the formula -- not the formula, but 17 the -- the recipe, whatever. 18 Q. Do you recall working with any R&D 19 individuals employed with the vendor? 20 A. Not -- no. 21 Q. Do you recall any instances in which 22 Nestlé and a vendor worked together to prepare a 23 particular egg product or to come together 24 to -- 25 A. I don't recall anything specialized,</p>	<p style="text-align: right;">105</p> <p>1 A. No. 2 - - - - - 3 (Thereupon, Deposition Exhibit 8, 4 Quantity Contract: 4615064924, 5 Bates Labeled NES00004517-00004528, 6 was marked for purposes of 7 identification.) 8 - - - - - 9 Q. Showing you what we've marked as 10 Trask Exhibit 8. It's Bates-stamped NES0004517. 11 Do you recognize this document? 12 A. Vaguely, yes. 13 Q. And what do you understand this 14 document to be? 15 A. I don't know. It looks like a 16 blanket contract/purchase order from SAP. 17 Q. Can you describe for me what that 18 means? 19 A. Well, it's essentially a blanket 20 purchase order for various products within the 21 egg category outlining the volume per item, per 22 plant and the price. 23 Q. I see in capital letters towards the 24 bottom it states, "THIS BLANKET 25 CONTRACT/PURCHASE ORDER."</p>

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<p style="text-align: right;">106</p> <p>1 Is that consistent with your</p> <p>2 understanding that this is a blanket</p> <p>3 contract/purchase order?</p> <p>4 A. Yeah.</p> <p>5 Q. And who is this with?</p> <p>6 A. It looks like vendor Michael Foods.</p> <p>7 Q. And there's a reference to a</p> <p>8 Quantity Contract with a number at the top left.</p> <p>9 A. Where?</p> <p>10 Q. Top left, first page. It states,</p> <p>11 Quantity Contract.</p> <p>12 A. Okay.</p> <p>13 Q. What's that a reference to?</p> <p>14 A. I think that's a reference to the</p> <p>15 contract number.</p> <p>16 Q. And there's the date of the</p> <p>17 contract, June 15th, 2008?</p> <p>18 A. Yes.</p> <p>19 Q. And what's referenced by -- or</p> <p>20 what's the significance of the start date,</p> <p>21 July 1, 2008, and end date, December 31st, 2008?</p> <p>22 A. Well, it looks like a 6-month</p> <p>23 period.</p> <p>24 Q. That same section I referenced</p> <p>25 earlier that appears to be a blanket</p>	<p style="text-align: right;">108</p> <p>1 valid 6-15, 2008 to 9-28, 2008, and then it has</p> <p>2 a gross price, \$5.72.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And what's your understanding as to</p> <p>6 the meaning of that?</p> <p>7 A. I want to say the pricing was valid</p> <p>8 during that time frame.</p> <p>9 Q. You noted that this is a document</p> <p>10 from SAP?</p> <p>11 A. I believe it is.</p> <p>12 Q. What do you mean by that? What's</p> <p>13 SAP?</p> <p>14 A. It's an operating system used to</p> <p>15 create purchase orders.</p> <p>16 Q. So this is the document that Nestlé</p> <p>17 prepared?</p> <p>18 A. Yes.</p> <p>19 Q. And do you see your name on the</p> <p>20 first page? Is your reference Bill Trask?</p> <p>21 A. Yes.</p> <p>22 Q. And why are you identified on there?</p> <p>23 A. Because I created the -- because I</p> <p>24 created this document in SAP.</p> <p>25 Q. And what would you do with a</p>
<p style="text-align: right;">107</p> <p>1 contract/purchase order --</p> <p>2 A. Okay.</p> <p>3 Q. -- states further, "and all</p> <p>4 subsequent purchase orders/advice/releases</p> <p>5 pertaining hereto are subject to 'The terms and</p> <p>6 conditions of purchase for Nestlé affiliated</p> <p>7 entities in North America.'"</p> <p>8 Do you know what that's a reference</p> <p>9 to?</p> <p>10 A. No.</p> <p>11 Q. You don't know to what the Nestlé</p> <p>12 affiliated entities in North America relates?</p> <p>13 A. Huh-uh.</p> <p>14 THE REPORTER: Is that a no?</p> <p>15 THE WITNESS: No. Sorry.</p> <p>16 BY MR. BOETTGE:</p> <p>17 Q. And then at the bottom of the</p> <p>18 document on the first page there's a reference</p> <p>19 to different conditions being valid.</p> <p>20 Do you see that?</p> <p>21 A. Where? No.</p> <p>22 Q. On the first page, last --</p> <p>23 A. Okay. Yeah, conditions valid, yes,</p> <p>24 I see it.</p> <p>25 Q. And then it has dates, conditions</p>	<p style="text-align: right;">109</p> <p>1 document like this?</p> <p>2 A. This is essentially a blanket</p> <p>3 purchase order, so the plants who are identified</p> <p>4 in each line item are able to --</p> <p>5 THE REPORTER: The plants who are</p> <p>6 the what?</p> <p>7 THE WITNESS: The plants who are</p> <p>8 identified in each line item are able to pull</p> <p>9 volume from the conditions of this contract,</p> <p>10 so -- at that price.</p> <p>11 BY MR. BOETTGE:</p> <p>12 Q. So sticking with this first item,</p> <p>13 this is identified as material number 22000301.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And this is the egg albumen powder</p> <p>17 spray?</p> <p>18 A. Yes.</p> <p>19 Q. And there's a reference to a</p> <p>20 condition on the second page.</p> <p>21 A. Yes.</p> <p>22 Q. Condition valid from 10-1-2008 to</p> <p>23 12-31, 2008.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>

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29 (Pages 110 to 113)

<p style="text-align: right;">110</p> <p>1 Q. So there's a price there of \$5.98?</p> <p>2 A. Yes.</p> <p>3 Q. So is it your testimony that a</p> <p>4 plant -- and here, I guess the plant is</p> <p>5 Bloomington, Illinois.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. If Bloomington, Illinois were to</p> <p>9 acquire from Michael Foods this egg albumen</p> <p>10 powder spray between October 1, 2008 to</p> <p>11 December 31, 2008, the price that they would pay</p> <p>12 would be \$5.98?</p> <p>13 A. Yes.</p> <p>14 Q. How is that price determined?</p> <p>15 A. Well, I think Michael Foods</p> <p>16 determined that based on what they think the</p> <p>17 market.</p> <p>18 Q. It's a price you received from</p> <p>19 Michael Foods?</p> <p>20 A. Mm-hmm.</p> <p>21 Q. Did you negotiate prices with</p> <p>22 Michael Foods?</p> <p>23 A. To some degree. I don't recall to</p> <p>24 what degree that it was.</p> <p>25 Q. There's a reference in the first</p>	<p style="text-align: right;">112</p> <p>1 seeing anything like this.</p> <p>2 - - - - -</p> <p>3 (Thereupon, Deposition Exhibit 10,</p> <p>4 Quality Contract: 4615077821, Bates</p> <p>5 Labeled NES00004502-00004507, was</p> <p>6 marked for purposes of</p> <p>7 identification.)</p> <p>8 - - - - -</p> <p>9 Q. I'm showing you what I've marked as</p> <p>10 Trask Exhibit 10.</p> <p>11 A. Okay.</p> <p>12 Q. This is, I think, just an extra</p> <p>13 copy.</p> <p>14 A. Oh, yeah. Sure. Okay.</p> <p>15 Q. And what do you understand -- or let</p> <p>16 me step back. Trask Exhibit 10 is a document</p> <p>17 Bates-stamped NES0004502.</p> <p>18 And what do you understand Trask</p> <p>19 Exhibit 10 purports to be?</p> <p>20 A. The same document as before, which</p> <p>21 is a blanket contract/purchase order from SAP.</p> <p>22 Q. And this is for a different period</p> <p>23 of time, correct?</p> <p>24 A. Yeah. Yes.</p> <p>25 Q. And what's the period of time that</p>
<p style="text-align: right;">111</p> <p>1 page to the Nestlé's supplier code?</p> <p>2 A. Where is that? Oh, yeah. Yeah, I</p> <p>3 see it.</p> <p>4 Q. What was the Nestlé's supplier code?</p> <p>5 A. I don't recall what that was.</p> <p>6 - - - - -</p> <p>7 (Thereupon, Deposition Exhibit 9,</p> <p>8 Speed Analysis, Bates Labeled</p> <p>9 NES0004501, was marked for purposes</p> <p>10 of identification.)</p> <p>11 - - - - -</p> <p>12 Q. What I've marked as Trask Exhibit 9</p> <p>13 is an excerpt of data that was produced by</p> <p>14 Nestlé in the litigation. It's identified as</p> <p>15 Bates number NES00004501. I'll represent that</p> <p>16 it was a 52-page document when it would be</p> <p>17 printed from start to finish, and I've produced</p> <p>18 here the first two pages and the last two pages.</p> <p>19 A. Okay.</p> <p>20 Q. Are you familiar with this</p> <p>21 arrangement of data?</p> <p>22 A. No.</p> <p>23 Q. You're not familiar with a spend</p> <p>24 analysis?</p> <p>25 A. I've never seen -- I don't recall</p>	<p style="text-align: right;">113</p> <p>1 Trask Exhibit 10 covers?</p> <p>2 A. It looks like 12-22-08 to 12-31-09.</p> <p>3 So it looks like a 12-month period.</p> <p>4 Q. And does how you explained how to</p> <p>5 read Trask 8 apply to Trask 10, that these were</p> <p>6 prices that the various plants could pay or what</p> <p>7 they would pay if they pulled product from?</p> <p>8 A. Yes.</p> <p>9 Q. With the exception that this would</p> <p>10 be prices that would be for a full year,</p> <p>11 correct?</p> <p>12 A. It looks like it, yes.</p> <p>13 - - - - -</p> <p>14 (Thereupon, Deposition Exhibit 11,</p> <p>15 E-Mail Chain, Bates Labeled</p> <p>16 NES00000177-00000183, was marked for</p> <p>17 purposes of identification.)</p> <p>18 - - - - -</p> <p>19 Q. What I'm showing you, Mr. Trask, is</p> <p>20 a document we've marked Exhibit 11. It's</p> <p>21 Bates-stamped NES0000177. It's an e-mail chain</p> <p>22 involving you and several others.</p> <p>23 A. (Document review.)</p> <p>24 Q. I want to focus your attention to</p> <p>25 the bottom e-mail. It's on the fourth page, an</p>

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<p style="text-align: right;">114</p> <p>1 e-mail from yourself to John Hill.</p> <p>2 A. Okay.</p> <p>3 Q. And there's a section entitled</p> <p>4 Market Outlook.</p> <p>5 What was Market Outlook?</p> <p>6 A. Just the outlook of the market.</p> <p>7 Q. And again, what was the reason that</p> <p>8 you're providing this to Mr. Hill?</p> <p>9 A. So he understands what the market</p> <p>10 dynamics are.</p> <p>11 Q. And I believe the fourth bullet has</p> <p>12 a reference to commodity future markets?</p> <p>13 A. Okay.</p> <p>14 Q. "That represent the major input</p> <p>15 costs for egg producers and further processors:</p> <p>16 Corn, soybean meal and crude oil."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And what was your reason for</p> <p>20 including that information in this market</p> <p>21 outlook?</p> <p>22 A. Because of base drivers in feed and</p> <p>23 fuel, probably.</p> <p>24 Q. And what impact would that have?</p> <p>25 A. I don't know what the exact impact</p>	<p style="text-align: right;">116</p> <p>1 Q. In case the other supplier wasn't</p> <p>2 able to perform?</p> <p>3 A. Yeah. Exactly.</p> <p>4 Q. I want to move all the way to the</p> <p>5 first page --</p> <p>6 A. Sure.</p> <p>7 Q. -- of the e-mail. And particularly,</p> <p>8 the second to the top e-mail from John Hill,</p> <p>9 December 4th, to you and Monte Mace.</p> <p>10 A. Okay.</p> <p>11 Q. I think you indicated Mr. Mace is in</p> <p>12 purchasing and helps support John Hill?</p> <p>13 A. Yes.</p> <p>14 Q. Is there any significance of a</p> <p>15 representation that he's with operations?</p> <p>16 A. I don't know exactly what his role</p> <p>17 was, but I know he was in the purchasing type</p> <p>18 role.</p> <p>19 Q. Who would ultimately make the final</p> <p>20 decision to enter into a contract with a vendor</p> <p>21 involving Dreyer's?</p> <p>22 A. Who would?</p> <p>23 Q. Yeah.</p> <p>24 A. I think it was a joint effort. So</p> <p>25 it was a -- so I was a portion of it. You know,</p>
<p style="text-align: right;">115</p> <p>1 would be.</p> <p>2 Q. Would it have some impact -- how</p> <p>3 would the price of fuel and feed and corn impact</p> <p>4 Nestlé?</p> <p>5 A. It would impact the cost of the egg.</p> <p>6 Q. And you note at the bottom of this</p> <p>7 page 5 a recommendation for the Laurel plant to</p> <p>8 use an 80/20 approach, favoring Ballas formula</p> <p>9 price and a quarter one Michael Foods fixed</p> <p>10 price of \$1.14.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And then it states, "This decision</p> <p>14 is based having secure supply and a secondary</p> <p>15 source into Laurel."</p> <p>16 What did you mean by that?</p> <p>17 A. What do you mean, like --</p> <p>18 Q. Well, what did you mean by --</p> <p>19 A. You have secure supply and then a</p> <p>20 secondary source, so you had two sources in</p> <p>21 Laurel instead of one. Because Ballas is a</p> <p>22 relatively new vendor, I believe.</p> <p>23 Q. Why would it be a benefit to have</p> <p>24 two sources?</p> <p>25 A. To secure supply.</p>	<p style="text-align: right;">117</p> <p>1 some of the stakeholders hold a portion of it,</p> <p>2 so . . .</p> <p>3 THE REPORTER: Stake --</p> <p>4 THE WITNESS: Stakeholders.</p> <p>5 BY MR. BOETTGE:</p> <p>6 Q. And in that context, who would the</p> <p>7 stakeholders be?</p> <p>8 A. Well, I mean, John Hill, Monte Mace</p> <p>9 and Steve Feyman, and then Steve Warner would be</p> <p>10 informed as well since he was the head of</p> <p>11 purchasing.</p> <p>12 So as you can see, as I look through</p> <p>13 this, we kind of gave him my recommendations</p> <p>14 and, you know, that's kind of what . . .</p> <p>15 Q. Would anyone else from Dreyer's be</p> <p>16 involved in that decision?</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. I want to focus your attention on</p> <p>19 that first line of the e-mail.</p> <p>20 A. Which?</p> <p>21 Q. Of the e-mail from Mr. Hill --</p> <p>22 A. John Hill, okay.</p> <p>23 Q. -- to you on December 4th and the</p> <p>24 statement, "As I think you know Dreyer's senior</p> <p>25 management has a very strong bias to being as</p>

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<p style="text-align: right;">118</p> <p>1 close to the market as possible for most things</p> <p>2 we buy."</p> <p>3 A. Okay.</p> <p>4 Q. What was your understanding as to</p> <p>5 what Mr. Hill meant by Dreyer's wanting to be as</p> <p>6 close to the market as possible?</p> <p>7 A. Meaning they want their price for</p> <p>8 eggs, from what I understand -- or what they're</p> <p>9 buying to be close to the market price.</p> <p>10 Q. The market price for eggs?</p> <p>11 A. Yeah, I think -- I believe so,</p> <p>12 because the subject matter looks like it's</p> <p>13 liquid egg yolk.</p> <p>14 Q. So you understood Mr. Hill to be</p> <p>15 telling you that Dreyer's management wanted to</p> <p>16 pay as close as possible to market price for</p> <p>17 eggs?</p> <p>18 A. Yes.</p> <p>19 Q. And was there an alternative that he</p> <p>20 had available to him, or Dreyer's had available?</p> <p>21 A. I don't recall.</p> <p>22 Q. Would a fixed contract be an</p> <p>23 alternative, too?</p> <p>24 A. Yeah, it could be an alternative.</p> <p>25 Q. Was this then a way of Mr. Hill</p>	<p style="text-align: right;">120</p> <p>1 notes, "With that as a background we have also a</p> <p>2 strong bias to only book with suppliers who are</p> <p>3 prepared to offer formula pricing, because our</p> <p>4 current perspective is that any fixed price</p> <p>5 commitments will look even more expensive on a</p> <p>6 relative basis in the coming months."</p> <p>7 What do you understand him to mean</p> <p>8 there?</p> <p>9 A. Well, basically the market was</p> <p>10 projected to -- was projecting for a decrease,</p> <p>11 so to enter into a fixed price when -- at a</p> <p>12 higher point in the market when it's coming</p> <p>13 down, that's the strategy you want to follow.</p> <p>14 So being close to the market as possible during</p> <p>15 a formula price where the market is looking --</p> <p>16 forecasting a drop is the direction that you</p> <p>17 want to go.</p> <p>18 Q. There's a note from Mr. Hill in that</p> <p>19 sentence in the first paragraph that we focused</p> <p>20 on that "being as close to the market as</p> <p>21 possible" that is -- or the reason would</p> <p>22 be -- or the statement, "due to our competitive</p> <p>23 position in the finished product marketplace."</p> <p>24 What was your understanding as to</p> <p>25 what Mr. Hill meant by "due to our competitive</p>
<p style="text-align: right;">119</p> <p>1 saying, all things being equal, we'd rather be</p> <p>2 with that formula that's tied to the market than</p> <p>3 in a fixed contract?</p> <p>4 A. I think that's -- it could be true.</p> <p>5 I mean, I think it's kind of speculative at this</p> <p>6 point looking at the way he words it.</p> <p>7 Q. But was that your understanding by</p> <p>8 Dreyer's having a strong bias to being as close</p> <p>9 to the market as possible?</p> <p>10 A. You know what? It doesn't really</p> <p>11 define the time frame there, so I don't</p> <p>12 know -- I can't remember if he was referring to</p> <p>13 as close as possible under current conditions or</p> <p>14 throughout the term of the agreement or what. I</p> <p>15 don't recall what that context was.</p> <p>16 Q. Then the statement, "We are more</p> <p>17 concerned about that KPI than simply beating</p> <p>18 2009 budget."</p> <p>19 What's KPI?</p> <p>20 A. Key performance indicators.</p> <p>21 Q. And what's the key performance</p> <p>22 indicator that's referenced here?</p> <p>23 A. I don't know exactly what he was</p> <p>24 referencing there.</p> <p>25 Q. And the last paragraph on that page</p>	<p style="text-align: right;">121</p> <p>1 position in the finished product marketplace"?</p> <p>2 A. Position between Häagen-Dazs and</p> <p>3 Ben & Jerry's or any other competition.</p> <p>4 Q. And how did being in that</p> <p>5 competition inform Dreyer's wanting to be as</p> <p>6 close to the market as possible?</p> <p>7 A. Say that again?</p> <p>8 Q. How did being in a competitive</p> <p>9 position in the finished product marketplace</p> <p>10 inform Dreyer's having a bias to being as close</p> <p>11 to the market as possible?</p> <p>12 A. Because our costs -- our import cost</p> <p>13 would be lower, so we could be more competitive</p> <p>14 in the marketplace.</p> <p>15 (Discussion held off the record.)</p> <p>16 - - - - -</p> <p>17 (Thereupon, Deposition Exhibit 12,</p> <p>18 Two E-Mails, Bates Labeled</p> <p>19 NEX0000076, was marked for purposes</p> <p>20 of identification.)</p> <p>21 - - - - -</p> <p>22 Q. What I'm now showing, you,</p> <p>23 Mr. Trask, has been marked Trask Exhibit 12</p> <p>24 Bates stamped NES000076, another e-mail chain.</p> <p>25 You're the author of the top e-mail. You're</p>

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<p style="text-align: right;">122</p> <p>1 writing to Monte Mace. 2 Do you see that? 3 A. Yes. 4 Q. And you note, "Ballas is now running 5 even with Michael Foods." 6 Do you see that? 7 A. Yes. 8 Q. And was Ballas another vendor? 9 A. Yes. 10 Q. Then you state, "Unless the whites 11 start climbing in value, I would start leaning 12 on Michael Foods to deliver product." 13 What did you mean by "whites start 14 climbing in value"? 15 A. I don't exactly remember, but whites 16 are referring to the white part of the egg. 17 Whites are typically the protein and the yolks 18 are the yellow portion. So in order 19 to -- there's an offset, liquid sugar egg yolks, 20 so you have to consider the cost of the egg 21 whites aside from the egg yolks. 22 So . . . 23 Q. What do you mean, you had to 24 consider the cost of the egg white as opposed to 25 the egg yolk?</p>	<p style="text-align: right;">124</p> <p>1 in 2008, there was an election that -- I believe 2 this is Dreyer's -- could choose between whether 3 they wanted to purchase from Ballas versus 4 Michael Foods? 5 A. Yeah. I mean, I think they're both 6 in the bid process. 7 Q. And, in fact, the "lean on Michael 8 Foods to deliver product," was this a reference 9 to an existing contract and a desire to purchase 10 more under the contract with Michael Foods than 11 with Ballas? 12 A. I don't know. 13 - - - - - 14 (Thereupon, Deposition Exhibit 13, 15 E-Mail from Ed Lewis to Various 16 Recipients w/Attachment, Bates 17 Labeled NES00000482-00000484, was 18 marked for purposes of 19 identification.) 20 - - - - - 21 Q. Showing as you what's been marked as 22 Exhibit 13, Bates stamp NES0000482. It's an 23 e-mail from Ed Lewis to John Hill, and you and 24 several others are copied on the e-mail. And 25 there's a reference in the cover e-mail with</p>
<p style="text-align: right;">123</p> <p>1 A. Well, I think that's kind of -- I 2 don't recall the dynamics within that, but 3 generally speaking, there's a separate market 4 for egg whites and egg yolks, so . . . 5 And then during the production 6 process, you separate the egg whites from the 7 yolks and that's kind of how you . . . 8 Q. Was the price relationship between 9 egg white and egg yolk something that Nestlé 10 looked at? 11 A. Yeah. It looked at it, but it 12 fluctuated. There was no consistency from what 13 I recall. 14 Q. What is the reference there to 15 Michael Foods in Exhibit 12? 16 A. What do you mean? 17 Q. You note, "Unless the whites start 18 climbing in value, I would start leaning on 19 Michael Foods to deliver product." 20 A. Okay. 21 Q. What was the reason that you would 22 lean on Michael Foods unless the whites started 23 climbing in value? 24 A. I don't recall. 25 Q. Does this reflect that at this point</p>	<p style="text-align: right;">125</p> <p>1 respect to yolks and whites. 2 What's your understanding as to what 3 Mr. Lewis is providing here? 4 A. Let me read it again. (Document 5 review.) 6 Basically it's trying to link the 7 yolk market to the whites or whole egg markets, 8 and they weren't following what -- see, it looks 9 like the whites and the wholes, they were going 10 down, but the yolks for some reason, they didn't 11 show the weakness that the other two egg 12 products showed. 13 Q. So the yolks were not following the 14 pricing trends of whites? 15 A. From whole whites from what I see 16 right here. 17 Q. Let's look at the attachment. 18 A. Okay. 19 Q. Do you recall this -- do you recall 20 discussions when you were at Nestlé about yolks 21 and whites? 22 A. Yeah. 23 Q. And is this -- 24 A. Yes. 25 Q. -- kind of an example of Nestlé kind</p>

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<p style="text-align: right;">126</p> <p>1 of fleshing out yolk and white pricing and</p> <p>2 trying to understand it?</p> <p>3 A. Yes, it's a -- it's an example.</p> <p>4 Q. And I want to focus you on the first</p> <p>5 bullet under Why on the page of the attachment.</p> <p>6 A. Okay.</p> <p>7 Q. And again, do you know what the Why</p> <p>8 is answering here?</p> <p>9 A. No. I'd have to read through</p> <p>10 the . . .</p> <p>11 (Document review.)</p> <p>12 It's probably why yolks had been a</p> <p>13 price leader compared to wholes and whites.</p> <p>14 Q. Is that also an understanding as to</p> <p>15 why yolks have not followed the pricing trends</p> <p>16 of whites and wholes?</p> <p>17 A. Does it -- you're asking me if it</p> <p>18 answers the question of why?</p> <p>19 Q. Yes.</p> <p>20 A. I don't know if it directly answers</p> <p>21 it.</p> <p>22 Q. But is that what it's attempting to</p> <p>23 answer?</p> <p>24 A. Yeah. It's trying to make sense of</p> <p>25 the market.</p>	<p style="text-align: right;">128</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. What is that a reference to?</p> <p>4 A. Reference to how possibly the cost</p> <p>5 structure is calculated.</p> <p>6 Q. The first bullet notes that "Yolks</p> <p>7 have been the price leader compared to wholes</p> <p>8 and whites."</p> <p>9 A. Mm-hmm.</p> <p>10 Q. And again, what did you understand</p> <p>11 "price leader" meant in that context?</p> <p>12 A. In that context, I would think it</p> <p>13 means it leads in price. Like it's a higher</p> <p>14 price.</p> <p>15 Q. Do you recall conversations with</p> <p>16 Informa relating to the market differences in</p> <p>17 whites versus yolk versus whole?</p> <p>18 A. I don't recall specific</p> <p>19 conversations, but I do recall probably</p> <p>20 reviewing that with them.</p> <p>21 MR. BOETTGE: Are we on 12?</p> <p>22 THE REPORTER: 14.</p> <p>23 MR. BOETTGE: 14.</p> <p>24</p> <p>25</p>
<p style="text-align: right;">127</p> <p>1 Q. And why the pricing for white</p> <p>2 doesn't follow the pricing for wholes and yolk?</p> <p>3 A. Right.</p> <p>4 Q. And then the first bullet notes,</p> <p>5 "Relatively inelastic demand due to few</p> <p>6 alternatives versus egg whites, which compete</p> <p>7 against other proteins, for example, vital wheat</p> <p>8 gluten."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And what is meant by "relatively</p> <p>12 inelastic demand?"</p> <p>13 A. Meaning egg whites have a lot of</p> <p>14 different competition as opposed to, I think</p> <p>15 yolks don't have many substitutes.</p> <p>16 Q. What are some of the competition</p> <p>17 that egg whites have?</p> <p>18 A. It says right here, other proteins</p> <p>19 or vital wheat gluten.</p> <p>20 Q. Do you recall any others?</p> <p>21 A. No.</p> <p>22 Q. Then the next bullet notes, "Low</p> <p>23 white demand means that if an egg is separated</p> <p>24 to provide yolks, yolks are going to bear the</p> <p>25 majority of the cost."</p>	<p style="text-align: right;">129</p> <p>1 - - - - -</p> <p>2 (Thereupon, Deposition Exhibit 14,</p> <p>3 E-Mail Chain, Bates Labeled</p> <p>4 NES00000403-00000405, was marked for</p> <p>5 purposes of identification.)</p> <p>6 - - - - -</p> <p>7 BY MR. BOETTGE:</p> <p>8 Q. Mr. Trask, I'm showing you what</p> <p>9 we've marked as Trask Exhibit 14, Bates-stamped</p> <p>10 NES0000403, another e-mail chain in which you're</p> <p>11 both, I think, a recipient of.</p> <p>12 A. (Document review.) Okay.</p> <p>13 Q. What was the reason that</p> <p>14 Steve Warner was forwarding the information</p> <p>15 that's reflected in here to you?</p> <p>16 A. After reading the first e-mail, it</p> <p>17 looks like it was a possible substitute for</p> <p>18 Buitoni or cookie dough.</p> <p>19 Q. When you say "a possible</p> <p>20 substitute," what do you mean?</p> <p>21 A. It could possibly substitute egg</p> <p>22 with another substance.</p> <p>23 Q. Other than egg?</p> <p>24 A. Yes.</p> <p>25 Q. Was it your experience that some egg</p>

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<p style="text-align: right;">130</p> <p>1 product purchasers were converting from the use 2 of eggs to alternative products? 3 A. No. I think it was just more of an 4 idea. 5 Q. Do you recall whether this was 6 something that Nestlé had done? 7 A. What do you mean, like? 8 Q. Had changed out its formula from 9 eggs or reduced the amount of eggs it used in 10 the formula to another product? 11 A. I don't recall them doing it for 12 eggs, but I think at any rate, you're going to 13 look at possible substitutes for the product 14 you're providing -- the product you're 15 purchasing to put in your product you're 16 providing. 17 Q. And what would be the reasons that 18 you would look for alternatives? 19 A. Costs, maybe it helps 20 improve -- there's lead time improvements, 21 there's quality is better. It's a less risk 22 region as far as growing. There's lots of 23 different things that could be considered. 24 Q. There's a reference in the second 25 sentence from Mr. Lewis of, "This may be a way</p>	<p style="text-align: right;">132</p> <p>1 Q. Do you recall during your time at 2 Nestlé whether Nestlé was any member of a trade 3 group? 4 A. I don't recall. 5 Q. While you were at Nestlé, did you 6 become aware of any initiatives within Nestlé on 7 the subject of animal welfare? 8 A. Well, I think initiative was on the 9 Dreyer side. 10 Q. And that was in connection with the 11 UEP certified program? 12 A. UEP, yeah. Potentially, the egg 13 legislation in California. 14 Q. Even apart from eggs specifically, 15 did you have any understanding when you were at 16 Nestlé that there was a company policy relating 17 to animal welfare? 18 A. I don't recall. 19 Q. Apart from a discussion relating to 20 Dreyer's and Häagen-Dazs' requirement for 21 certified eggs, do you recall any other 22 discussions at Nestlé relating to animal 23 welfare? 24 A. There may have been, but I don't 25 recall anything specifically.</p>
<p style="text-align: right;">131</p> <p>1 to further reduce eggs in Toll House cookie 2 dough." 3 Do you see that? 4 A. Yes. 5 Q. Did you have an understanding that 6 Nestlé had already reduced the eggs that it used 7 in preparing Nestlé cookie dough? 8 A. I don't recall. 9 Q. You have a direction here from 10 Mr. Lewis "to touch base with them to get 11 discuss opportunities." 12 Who was the "them" that Mr. Lewis 13 was referring to? 14 A. Probably, I would -- just by reading 15 this, I would assume it was folks at Toll House. 16 Q. And perhaps, in fact, Buitoni 17 because that's a reference from Mr. Warner in 18 his earlier e-mail? 19 A. Oh, yeah. Yes. 20 Q. And did you follow up -- or recall 21 following up with Buitoni or Toll House in 22 connection with a replacement of egg with whey 23 protein? 24 A. I mean, I probably did. I don't 25 recall anything specifically.</p>	<p style="text-align: right;">133</p> <p>1 Q. When did you first become aware of 2 the UEP certified program? 3 A. I don't remember. 4 Closely -- probably when -- during my tenure of 5 trying -- of managing the egg category. 6 MR. BOETTGE: You know what? Let's 7 go off the record for a minute. 8 THE VIDEOGRAPHER: Off the record. 9 (Discussion held off the record.) 10 - - - - - 11 (Thereupon, Deposition Exhibit 15, 12 E-Mail Chain, Bates Labeled 13 MFI01093250109326, was marked for 14 purposes of identification.) 15 - - - - - 16 THE VIDEOGRAPHER: We're back on the 17 record. The time is 4:32. 18 BY MR. BOETTGE: 19 Q. Mr. Trask, I'm showing you an e-mail 20 that was produced by Michael Foods in this case. 21 It's been marked Exhibit 15. It's Bates-stamped 22 MFI 0109325 to 9326. And as I noted to your 23 counsel, off the record, we have at Michael 24 Foods redacted for this deposition an internal 25 e-mail at Michael Foods --</p>

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<p style="text-align: right;">134</p> <p>1 A. Okay. 2 Q. -- at the very top portion of the 3 first page. 4 And I want to direct your attention 5 to the e-mail from an Ed Lewis -- 6 A. Yeah. 7 Q. -- that -- and again, he was your 8 supervisor? 9 A. Yes. 10 Q. And he's asking, "What upcharge 11 would there be if Danville were to ask for UEP 12 whole eggs." 13 What was your understanding as to 14 why he was asking Michael Foods that question? 15 A. Because they didn't currently use 16 UEP eggs, so we wanted to understand what the 17 upcharge was for UEP eggs. 18 Q. And what was Danville? 19 A. I think that was Buitoni pasta. I 20 can't remember. 21 Q. So there was another part of Nestlé 22 that was purchasing eggs from Michael Foods that 23 were not certified? 24 A. Mm-hmm. 25 THE REPORTER: Yes?</p>	<p style="text-align: right;">136</p> <p>1 earlier. 2 Do you have a recollection that, in 3 fact, Michael Foods sold Nestlé UEP certified 4 egg? 5 A. I don't recall. 6 Q. But the e-mail that we are 7 discussing is consistent with your understanding 8 that Michael Foods was selling at this time 9 non-certified egg as well to -- 10 A. Correct. 11 Q. -- Nestlé, correct? 12 A. Mm-hmm. Yes. 13 Q. So in a sense here Michael Foods is 14 offering Nestlé a choice whether it would like 15 to purchase some of its eggs certified or 16 noncertified, correct? 17 A. Yes. 18 Q. And if Nestlé agreed for certified 19 eggs, Nestlé would have to pay a premium for 20 those eggs, correct? 21 A. Correct. 22 Q. And the reason for there being a 23 surcharge is that it would costs Michael Foods 24 more for those eggs, correct? 25 MR. CAMPBELL: Object as to form.</p>
<p style="text-align: right;">135</p> <p>1 THE WITNESS: Yes. 2 BY MR. BOETTGE: 3 Q. And Mr. Lewis is asking Michael 4 Foods what the upcharge would be if Danville 5 were to be supplied with UEP whole eggs? 6 A. Yes. 7 Q. And then there's a response on the 8 first page of the exhibit from Mr. Brommer at 9 Michael Foods. 10 Do you recall Mr. Brommer? 11 A. Yes. 12 Q. And what was his position at Michael 13 Foods that you recall? 14 A. He was my sales contact. 15 Q. And the response to your question 16 was that it would cost 4¢ per pound to supply 17 Buitoni or Danville with the certified egg, the 18 UEP egg, correct? 19 A. Mm-hmm. 20 Q. And then there's a note that Michael 21 Foods today only is able to supply UEP product 22 as liquid egg. 23 Do you see that? 24 A. Yes. 25 Q. And I may have asked you this</p>	<p style="text-align: right;">137</p> <p>1 THE WITNESS: I don't know it would 2 cost more to -- I don't know, but I guess the 3 cost of UEP certification around that is more 4 expensive because of the guidelines. To be 5 certified in that UEP is different than someone 6 who's not. So I'm not sure what the costs were. 7 But, I mean, it was my understanding that the 8 UEP certification was more expensive because of 9 that. 10 BY MR. BOETTGE: 11 Q. Then there's an e-mail at the top 12 from Mr. Lewis to Mr. Brommer that you're copied 13 on. And he notes, "What we're doing is 14 preparing to answer questions if Häagen-Dazs' 15 preference for UEP, by implication, puts 16 pressure on other Nestlé brands." 17 A. Mm-hmm. 18 Q. What was your understanding as to 19 what Mr. Lewis meant by that? 20 A. If Häagen-Dazs were to prefer UEP, 21 what would that mean for the rest of our brands? 22 So we're trying to understand the cost 23 implication if that requirement gets transferred 24 to other businesses within -- under Nestlé. 25 Q. And what was the pressure that</p>

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<p style="text-align: right;">138</p> <p>1 Mr. Lewis was -- what did you understand was the 2 pressure that Mr. Lewis was referring to in that 3 e-mail?</p> <p>4 A. Meaning it would put pressure on 5 other brands to follow Häagen-Dazs if they 6 were . . .</p> <p>7 Q. Where would that pressure come from 8 for those other brands?</p> <p>9 A. I don't know.</p> <p>10 Q. And how does the fact of an upcharge 11 help Mr. Lewis, in your understanding, answer 12 questions if the preference for UEP put pressure 13 on other Nestlé brands?</p> <p>14 A. So we understand the cost impact.</p> <p>15 Q. Did you have an understanding that 16 Michael Foods was a company that was permitted 17 to sell UEP certified eggs?</p> <p>18 A. Meaning?</p> <p>19 Q. They had the ability to do so.</p> <p>20 A. Yeah. I mean, looking at their 21 e-mail, it looks like they did, only on liquid 22 products.</p> <p>23 Q. Did you have an understanding that 24 Rose Acre also was a company that was permitted 25 to sell UEP certified eggs?</p>	<p style="text-align: right;">140</p> <p>1 of pressure it would be. I mean, it could be. 2 I don't know.</p> <p>3 Q. Would it be any other kind of 4 pressure that Nestlé would feel would force it 5 into having to purchase UEP certified egg?</p> <p>6 A. It could be external pressures like 7 you said, like the customers or the market, but, 8 yeah, I can't speculate on what that would be, I 9 mean . . .</p> <p>10 Q. And if, in fact, Nestlé would 11 receive that pressure, it would be a benefit to 12 Nestlé to be able to have suppliers that could 13 supply UEP certified egg, correct?</p> <p>14 A. Correct.</p> <p>15 - - - - -</p> <p>16 (Thereupon, Deposition Exhibit 16, 17 E-Mail Chain w/Attachment, Bates 18 Labeled NES00000394-00000396, was 19 marked for purposes of 20 identification.)</p> <p>21 - - - - -</p> <p>22 Q. Showing you what has been marked as 23 Exhibit 16, NES0000394. It's an e-mail from 24 Dale Bohman at NBS Purchasing. 25 Who is Dale Bohman?</p>
<p style="text-align: right;">139</p> <p>1 A. I don't recall.</p> <p>2 Q. Did you have an understanding that 3 in order to sell UEP certified eggs, a company 4 would need to join the UEP certified program?</p> <p>5 A. I didn't. I don't recall.</p> <p>6 Q. Do you know if anyone at Nestlé ever 7 expressed any concern or objections to the fact 8 that Michael Foods was able to sell UEP 9 certified eggs?</p> <p>10 A. I don't think they had any concerns 11 that I can think of.</p> <p>12 Q. In fact, as an egg buyer, Nestlé 13 would have wanted Michael Foods to be able to 14 sell UEP certified eggs, correct?</p> <p>15 MR. CAMPBELL: Objection as to form.</p> <p>16 THE WITNESS: I think they're 17 understanding what their capabilities were. I 18 mean, if it was something where we were 19 pressured into and we had to react, we had to 20 understand what they were able to supply us and 21 support us. If they could support us.</p> <p>22 BY MR. BOETTGE:</p> <p>23 Q. And that pressure that you're 24 referring to would be customer pressure?</p> <p>25 A. It could be. I don't know what kind</p>	<p style="text-align: right;">141</p> <p>1 A. He's was a purchasing manager.</p> <p>2 Q. And how did he relate in the 3 hierarchy of sourcing specialists? And I think 4 you mentioned Mr. Lewis was a product manager?</p> <p>5 A. Yeah. So like someone like myself 6 would support Dale in his -- any kind of 7 activities he would have and then he reported to 8 Ed Lewis -- or Steve Feyman, the group manager.</p> <p>9 Q. Did Dale Bohman focus on particular 10 product consideration?</p> <p>11 A. Meat, like beef.</p> <p>12 Q. I want to turn your attention to the 13 last page of the attachment.</p> <p>14 A. Mm-hmm.</p> <p>15 Q. And this is a document relating to 16 eggs, correct?</p> <p>17 A. That's what it looks like, yes.</p> <p>18 Q. And just real quickly, across the 19 top, DGIC, I think we talked about earlier. 20 You understand that is a reference 21 to Dreyer's?</p> <p>22 A. Dreyer's ice cream, yeah.</p> <p>23 Q. Baking. What is that a reference 24 to?</p> <p>25 A. Toll House.</p>

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<p style="text-align: right;">142</p> <p>1 Q. And Denver?</p> <p>2 A. I want to say that was like</p> <p>3 scrambled eggs. So there's like, IQF,</p> <p>4 individually quick frozen eggs for their Hot</p> <p>5 Pockets division.</p> <p>6 Q. And who supplied those eggs?</p> <p>7 A. Cargill Kitchen Solutions.</p> <p>8 Q. And then there's Meals.</p> <p>9 What's that's in reference to?</p> <p>10 A. I would assume it's like Lean</p> <p>11 Cuisine and Stouffer's and stuff like that.</p> <p>12 Q. And then Buitoni is the pasta we</p> <p>13 discussed earlier?</p> <p>14 A. Correct.</p> <p>15 Q. And then there's a number of items</p> <p>16 down the left. Let's go through those quickly.</p> <p>17 What's Cover?</p> <p>18 A. I think it's the coverage of volume.</p> <p>19 So if you're on a fixed price for a whole year,</p> <p>20 it's 100 percent. If you're at a formula price,</p> <p>21 I would think you're covered for -- you know,</p> <p>22 you're covered for that long period of time.</p> <p>23 Q. And then Budget Price?</p> <p>24 A. Budget, I believe the price that was</p> <p>25 put into the budget.</p>	<p style="text-align: right;">144</p> <p>1 liquid -- or two divisions, sorry, that we</p> <p>2 receive the liquid eggs.</p> <p>3 Q. Then there's a comment about</p> <p>4 evaluating alternatives to sugar yolks and</p> <p>5 Häagen-Dazs.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And what's that a reference to?</p> <p>9 A. Looking at supply alternatives to</p> <p>10 the current.</p> <p>11 Q. Supply alternatives?</p> <p>12 A. Mm-hmm. Different sources of</p> <p>13 supply.</p> <p>14 Q. And then the comment, "Challenge use</p> <p>15 of animal welfare eggs in Häagen-Dazs."</p> <p>16 What's that a reference to?</p> <p>17 A. I don't know. It looks like just do</p> <p>18 we need to use animal welfare eggs.</p> <p>19 Q. Do you recall whether Häagen-Dazs</p> <p>20 did at this time?</p> <p>21 A. I don't recall.</p> <p>22 Q. And do you know why the "challenge</p> <p>23 use of animal welfare eggs" is shown in this</p> <p>24 strategy?</p> <p>25 A. I would suspect it was the animal</p>
<p style="text-align: right;">143</p> <p>1 Q. Project Ownership Price?</p> <p>2 A. I don't recall.</p> <p>3 Q. And then you have the Current Market</p> <p>4 Price?</p> <p>5 A. Yeah. So maybe project ownership</p> <p>6 price is what our current price was and the</p> <p>7 current market price is where the current market</p> <p>8 is.</p> <p>9 Q. And then there's a note here of</p> <p>10 Strategy to "move between fixed and formula</p> <p>11 pricing as markets dictate."</p> <p>12 Do you see that?</p> <p>13 A. Mm-hmm.</p> <p>14 Q. And what's that a reference to?</p> <p>15 A. Two different pricing options, fixed</p> <p>16 or formula, depending where the market's going.</p> <p>17 Q. And then the comment "Buitoni, DGIC,</p> <p>18 Laurel"?</p> <p>19 What is the reference that there's</p> <p>20 two locations listed?</p> <p>21 A. It looks like those are the two</p> <p>22 liquid -- two plants that we receive liquid</p> <p>23 eggs.</p> <p>24 Q. Two, you said --</p> <p>25 A. Two plants that we receive</p>	<p style="text-align: right;">145</p> <p>1 welfare eggs were higher costs, so the challenge</p> <p>2 in the position, do we need to use it or not,</p> <p>3 would be a way to look at different pricing</p> <p>4 mechanisms.</p> <p>5 Q. You can in a sense save cost --</p> <p>6 A. Yes.</p> <p>7 Q. -- if you elected not to use UEP</p> <p>8 certified egg, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Are you familiar with the name Diane</p> <p>11 McIntyre?</p> <p>12 A. No.</p> <p>13 - - - - -</p> <p>14 (Thereupon, Deposition Exhibit 17,</p> <p>15 E-Mail Chain, Bates Labeled</p> <p>16 NES00000499-00000502, was marked for</p> <p>17 purposes of identification.)</p> <p>18 - - - - -</p> <p>19 Q. I believe we're on Trask Exhibit 17,</p> <p>20 an e-mail Bates-stamped NES0000499. This is an</p> <p>21 e-mail chain.</p> <p>22 Let's start on the second page. The</p> <p>23 top e-mail is an e-mail from Mr. Lewis, and do</p> <p>24 you see that you're copied on this e-mail?</p> <p>25 A. Yeah.</p>

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<p style="text-align: right;">146</p> <p>1 Q. And also, I see Jacki Pecek's name?</p> <p>2 A. Yeah.</p> <p>3 Q. I had understood that you</p> <p>4 essentially replaced Jacki Pecek after a leave</p> <p>5 of absence.</p> <p>6 Did she come back then during this</p> <p>7 time?</p> <p>8 A. Yes. I didn't replace her, but I</p> <p>9 replaced some of her responsibilities.</p> <p>10 Q. Understood.</p> <p>11 And there's a comment from</p> <p>12 Mr. Lewis, "We are addressing this issue with</p> <p>13 Häagen-Dazs right now."</p> <p>14 And maybe I'll let you take a look</p> <p>15 at the e-mail because I'm going to ask you what</p> <p>16 was the issue that they're addressing with</p> <p>17 Häagen-Dazs.</p> <p>18 A. I don't know. I'd have to look at</p> <p>19 the e-mail. (Document review.)</p> <p>20 I think it's just using the</p> <p>21 certification of animal welfare on our -- on our</p> <p>22 eggs, from what I understand.</p> <p>23 And then also he's raising the</p> <p>24 concern, Ed is, on the concern, what would that</p> <p>25 mean with other Nestlé brands, long-term impact.</p>	<p style="text-align: right;">148</p> <p>1 Q. Would it be the certified eggs that</p> <p>2 are being paid a premium for?</p> <p>3 A. Could be, yeah.</p> <p>4 Q. Well, is this a reference to</p> <p>5 Häagen-Dazs wanting to use animal welfare eggs,</p> <p>6 correct?</p> <p>7 A. Okay. Yeah.</p> <p>8 Q. And Mr. Lewis is looking at the</p> <p>9 issue of whether Häagen-Dazs should use animal</p> <p>10 welfare eggs?</p> <p>11 A. I think so.</p> <p>12 Q. So with that as background,</p> <p>13 understanding that a reference to paying a</p> <p>14 premium for those would be a premium for</p> <p>15 Nestlé's purchase of certified eggs?</p> <p>16 A. Yeah. It's hard to determine that,</p> <p>17 but -- I mean, based on that context, but --</p> <p>18 Q. Is that a fair inference from the</p> <p>19 context?</p> <p>20 MR. CAMPBELL: I object as to form.</p> <p>21 There's nothing about certified eggs in here.</p> <p>22 THE WITNESS: Yeah, I don't -- I</p> <p>23 don't know.</p> <p>24 BY MR. BOETTGE:</p> <p>25 Q. Is it your understanding that the</p>
<p style="text-align: right;">147</p> <p>1 Q. There's a statement, "Häagen-Dazs</p> <p>2 wants to use animal welfare eggs."</p> <p>3 Do you see that?</p> <p>4 A. Yes. Mm-hmm.</p> <p>5 Q. And do you mean -- what did you</p> <p>6 understand animal welfare in that context to</p> <p>7 mean?</p> <p>8 A. UEP.</p> <p>9 Q. Do you have a recollection of</p> <p>10 Häagen-Dazs wanting to use UEP eggs at this</p> <p>11 time?</p> <p>12 A. Yeah, I -- vaguely, yeah, I</p> <p>13 mean . . .</p> <p>14 Q. Does this suggest to you whether</p> <p>15 Häagen-Dazs at this time, the time the e-mail</p> <p>16 was written, was, in fact, using UEP certified</p> <p>17 eggs?</p> <p>18 A. I don't know.</p> <p>19 Q. There's a note about paying a</p> <p>20 premium, 3 to \$400,000 annually for those.</p> <p>21 A. Yeah.</p> <p>22 Q. What are the "those" that are</p> <p>23 referenced there?</p> <p>24 A. I don't know. I would assume -- I</p> <p>25 have no idea.</p>	<p style="text-align: right;">149</p> <p>1 premium was being paid to purchase UEP certified</p> <p>2 eggs?</p> <p>3 A. It could have been.</p> <p>4 Q. And then there's a note that, "We</p> <p>5 pay premium for those and are limited in our</p> <p>6 supplier base."</p> <p>7 What was your understanding what</p> <p>8 Mr. Lewis meant by Nestlé being limited in its</p> <p>9 supplier base?</p> <p>10 A. Probably a limited amount of</p> <p>11 suppliers that supply whatever he was alluding</p> <p>12 to.</p> <p>13 Q. The animal welfare eggs?</p> <p>14 A. Could be, yeah. I don't know.</p> <p>15 Q. Then there's the last sentence, "A</p> <p>16 side issue that Mary may be aware of is what</p> <p>17 does an animal welfare claim by one Nestlé brand</p> <p>18 imply about other Nestlé brands."</p> <p>19 A. Yeah.</p> <p>20 Q. What was the concern there that was</p> <p>21 being addressed?</p> <p>22 A. Probably if we claim animal welfare</p> <p>23 on one brand and we don't another, does that</p> <p>24 mean -- what is the implications for the other</p> <p>25 brands that don't claim animal welfare? So</p>

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<p style="text-align: right;">150</p> <p>1 would it hurt us? Would it not?</p> <p>2 Q. And how would it hurt you?</p> <p>3 A. I don't know.</p> <p>4 Q. Move down to the bottom of the page.</p> <p>5 There's an e-mail from Denise Shurney.</p> <p>6 A. Okay.</p> <p>7 Q. Do you know who Denise Shurney is?</p> <p>8 A. No.</p> <p>9 Q. Do you know what Regulatory Affairs</p> <p>10 was?</p> <p>11 A. Yes.</p> <p>12 Q. What was Regulatory Affairs?</p> <p>13 A. Just make sure that we are compliant</p> <p>14 with whatever we claim.</p> <p>15 Q. Who is Ken Kostal?</p> <p>16 A. Ken Kostal was a purchasing manager</p> <p>17 of poultry and seafood, I believe, at the time.</p> <p>18 Q. There's a comment from Denise at the</p> <p>19 bottom, or a statement, "Animal raising claims</p> <p>20 are an informative consumer communication that</p> <p>21 could differentiate our products from our</p> <p>22 competitors."</p> <p>23 What was meant by that sentence?</p> <p>24 A. It could mean that consumers know</p> <p>25 that we -- or whatever company is sensitive to</p>	<p style="text-align: right;">152</p> <p>1 BY MR. BOETTGE:</p> <p>2 Q. Is it your understanding poultry</p> <p>3 would include chickens?</p> <p>4 A. Yeah, that's what poultry is.</p> <p>5 Q. Did you have an understanding that</p> <p>6 this was a reference to eggs?</p> <p>7 A. No.</p> <p>8 Q. Didn't know one way or the other?</p> <p>9 A. No.</p> <p>10 - - - - -</p> <p>11 (Thereupon, Deposition Exhibit 18,</p> <p>12 E-Mail Chain w/Attachment, Bates</p> <p>13 Labeled NES0000072-00000075, was</p> <p>14 marked for purposes of</p> <p>15 identification.)</p> <p>16 - - - - -</p> <p>17 Q. Showing you, Mr. Trask, what we've</p> <p>18 marked as Trask Exhibit 18. It's Bates-stamped</p> <p>19 NES0000072, and it's an e-mail, at least the top</p> <p>20 e-mail is from you to Steve Feyman and Ed Lewis.</p> <p>21 A. Okay.</p> <p>22 Q. Do you recall this e-mail?</p> <p>23 A. Nope.</p> <p>24 Q. Do you understand it to be an e-mail</p> <p>25 relating or comparing UEP and other animal</p>
<p style="text-align: right;">151</p> <p>1 animal rights and we only work with vendors who</p> <p>2 are sensitive to those rights that animals have,</p> <p>3 is what I would assume.</p> <p>4 Q. And that would be a positive thing</p> <p>5 for Nestlé?</p> <p>6 A. It could be. I don't know.</p> <p>7 Q. Let's go to the first page of the</p> <p>8 e-mail. And this is an e-mail from Mary Marr.</p> <p>9 Do you know who Mary Marr is?</p> <p>10 A. No.</p> <p>11 Q. She's writing to Denise Shurney and</p> <p>12 to your boss at the time, Ed Lewis.</p> <p>13 A. Okay.</p> <p>14 Q. That "Nestlé would be in favor of</p> <p>15 supporting standardized guidelines for animal</p> <p>16 raising claims for meat and poultry."</p> <p>17 Do you see that?</p> <p>18 A. Okay. Yeah.</p> <p>19 Q. And was it your understanding that</p> <p>20 UEP was a standardized guideline for animal</p> <p>21 raising claims?</p> <p>22 MR. CAMPBELL: I object to the form.</p> <p>23 It's talking about meat and poultry, not eggs.</p> <p>24 THE WITNESS: Yeah, I don't know. I</p> <p>25 don't know.</p>	<p style="text-align: right;">153</p> <p>1 welfare requirements?</p> <p>2 A. Yeah, looking at it, yes.</p> <p>3 Q. And was this information that you</p> <p>4 had asked Mr. Diercks to supply you?</p> <p>5 A. I believe so, yes.</p> <p>6 Q. Why did you ask him to provide this</p> <p>7 to you?</p> <p>8 A. Probably just so I understand the</p> <p>9 differences between -- so I don't think</p> <p>10 Rembrandt had -- could use UEP eggs, so to</p> <p>11 understand what the differences were maybe would</p> <p>12 help us make a decision on if UEP is necessary</p> <p>13 or not, or what the differences were, really.</p> <p>14 Q. Do you recall what you did with this</p> <p>15 information?</p> <p>16 A. No. I think it was just -- no, I</p> <p>17 don't.</p> <p>18 Q. Were you asked by Mr. Feyman or</p> <p>19 Mr. Lewis or anyone else at Nestlé to obtain the</p> <p>20 information?</p> <p>21 A. I may have been. I don't recall.</p> <p>22 Q. Mr. Trask, are you aware that Nestlé</p> <p>23 has filed a lawsuit against a number of</p> <p>24 entities, including United Egg Producers and a</p> <p>25 number of other, a number of egg producers?</p>

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<p style="text-align: right;">154</p> <p>1 A. Yes. 2 Q. What's your understandings of the 3 allegations in the lawsuit? 4 MR. CAMPBELL: I object and instruct 5 the witness not to answer to the extent that his 6 understanding, if any, is based upon 7 conversations with counsel. If he has any 8 understanding outside of conversations with me, 9 then he may answer. 10 BY MR. BOETTGE: 11 Q. That's fair. 12 And do you have an understanding of 13 the allegations in the lawsuit apart from 14 information you learned from talking with 15 counsel? 16 A. Just that there was something with 17 pricing, and that's about it. 18 Q. Have you talked to anyone at Nestlé 19 about the lawsuit? 20 A. No. 21 Q. Were you made aware of the lawsuit 22 before it was filed? 23 A. I don't -- I don't know. I 24 think -- I have no idea what the timing is. 25 MR. BOETTGE: Take a short break.</p>	<p style="text-align: right;">156</p> <p>1 ACKNOWLEDGMENT OF DEPONENT 2 3 I, _____, do hereby 4 acknowledge that I have read and examined the 5 foregoing testimony, and the same is a true, correct 6 and complete transcription of the testimony given by 7 me, and any corrections appear on the attached Errata 8 Sheet signed by me. 9 10 11 12 _____ 13 (DATE) (SIGNATURE) 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">155</p> <p>1 THE VIDEOGRAPHER: Off the record. 2 The time is 5:00. 3 (Discussion held off the record.) 4 THE VIDEOGRAPHER: We're back on the 5 record. The time is 5:04. 6 MR. BOETTGE: Mr. Trask, thank you 7 for your time this afternoon. I have no further 8 questions. 9 THE WITNESS: Thanks. 10 MR. CAMPBELL: We have no questions. 11 We will not waive signature. We'll read and 12 sign. 13 THE VIDEOGRAPHER: Thank you. 14 This concludes the deposition of 15 William Trask. We're off the record. It's 16 5:04. 17 18 (The deposition was concluded.) 19 - - - - - 20 21 22 23 24 25</p>	<p style="text-align: right;">157</p> <p>1 REPORTER'S CERTIFICATE 2 3 The State of Ohio) 4) SS: 5 County of Cuyahoga.) 6 7 I, Donnalee Cotone, a Notary Public 8 within and for the State of Ohio, duly 9 commissioned and qualified, do hereby certify 10 that the within named witness, WILLIAM E. TRASK, 11 was by me first duly sworn to testify the truth, 12 the whole truth and nothing but the truth in the 13 cause aforesaid; that the testimony then given 14 by the above-referenced witness was by me 15 reduced to stenotypy in the presence of said 16 witness; afterwards transcribed, and that the 17 foregoing is a true and correct transcription of 18 the testimony so given by the above-referenced 19 witness. 20 I do further certify that this 21 deposition was taken at the time and place in 22 the foregoing caption specified and was 23 completed without adjournment. 24 25 (Certificate continued on next page.)</p>

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<div style="text-align: right; margin-bottom: 10px;">158</div> <div style="margin-bottom: 10px;">1 (Certificate continued.) 2 3 4 I do further certify that I am not a 5 relative, counsel or attorney for either party 6 or otherwise financially interested in the 7 events of this action; nor is the court 8 reporting firm with which I am affiliated under 9 a contract as defined in Civil Rule 28(D). 10 IN WITNESS WHEREOF, I have hereunto 11 set my hand and affixed my seal of office at 12 Cleveland, Ohio, on this 1st day of 13 May, 2014. 14 15 16 17 18 _____ 19 Donnalee Cotone, Notary Public 20 within and for the State of Ohio 21 My commission expires February 7, 2017. 22 23 24 25</div>	

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